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## IPPERWASH INQUIRY

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May 30, 2007

5

The Honourable Michael Bryant  
Attorney General  
Ministry of the Attorney General  
720 Bay Street, 7<sup>th</sup> Floor  
Toronto, Ontario  
M5G 2K1

Dear Minister Bryant:

As Commissioner appointed by Order-in-Council 1662/2003 and in accordance with the mandate assigned therein, I am pleased to transmit to you my report, in four volumes, in both English and French.

The first volume contains the findings from my investigation into the events surrounding the death of Dudley George in September 1995. The second volume contains my policy analysis and recommendations directed at avoiding violence in similar circumstances. The third volume documents the inquiry process and the fourth volume is an Executive Summary.

Yours sincerely,

A handwritten signature in black ink, appearing to be "SL", written over a horizontal line.

The Honourable Sidney B. Linden  
Commissioner

Encl.







# REPORT OF THE IPPERWASH INQUIRY



VOLUME 1 Investigation and Findings

The Honourable Sidney B. Linden, Commissioner



Published by  
Ministry of the Attorney General

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Cover and Interior Design: *Tania Craan Design*  
Book Layout: *Emerson Group*

Set ISBN: 978-1-4249-3839-1

Volume 1 ISBN: 978-1-4249-3840-7

Copies of this and other Ontario Government publications are available from Publications Ontario at 880 Bay St., Toronto. Out-of-town customers may write to Publications Ontario, 50 Grosvenor St., Toronto M7A 1N8. Telephone (416) 326-5300 or toll-free in Ontario 1-800-668-9938. Fax (416) 326-5317. Internet: [www.publications.serviceontario.ca](http://www.publications.serviceontario.ca). The hearing impaired may call toll-free in Ontario 1-800-268-7095. MasterCard and Visa are accepted. Cheques and money orders should be made payable to the Minister of Finance. Prepayment is required. This report is also available at [www.ipperwashinquiry.ca](http://www.ipperwashinquiry.ca), for one year following publication and, thereafter, at [www.attorneygeneral.jus.gov.on.ca](http://www.attorneygeneral.jus.gov.on.ca).





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## INTRODUCTION

### 1.1 Inquiry Mandate

In 1995, Mr. Dudley George was shot during a land claim occupation and protest by Aboriginal people in Ipperwash Provincial Park and died of his wounds. Eight years later, in November 2003, the Ontario government established the Ipperwash Inquiry, pursuant to the *Public Inquiries Act*.

I discuss the purpose of public inquiries and the process of the Ipperwash Inquiry in detail in Volume 3 of this report. In this chapter, I describe more briefly the purpose of public inquiries and the process of conducting the investigation, or Part 1 of the Inquiry.

The mandate of the Ipperwash Inquiry, as set out in the Order-in-Council was

1. to inquiry into and report on events surrounding the death of Dudley George; and,
2. to make recommendations directed to the avoidance of violence in similar circumstances.

In broad terms, there are two types of public inquiries. One is an investigative inquiry, which examines and reports on a specific incident or series of events. Often, an element of public controversy is attached to the matter being investigated. Investigative inquiries are established to conduct an independent, comprehensive, and transparent review of the events. Unlike a civil or criminal trial, an inquiry is intended to uncover the truth rather than to establish liability. The purpose, in other words, is to find out what happened — to look back.

The other type of public inquiry focuses on the development of public policy in a specific area of public concern. Often, the need for such an inquiry arises from undesirable events or circumstances. In these cases, the inquiry serves as a means through which the contributing factors can be fully considered. Within that context, the inquiry may make recommendations for measures to prevent recurrence or for systemic improvement — in other words, to look forward.

Thus, a public inquiry can be an opportunity to look back or to look forward. It can also be both. An inquiry can be called to uncover the truth about a specific matter and, at the same time, to propose policy reform. The Ipperwash



Inquiry was established to meet both of those objectives — to conduct an investigation and to examine policy.

However, all public inquiries serve a further purpose. A public inquiry also informs the public by presenting evidence that, until that point, may only have been given in private, if at all. It provides a forum for citizens and groups to participate in the resolution of issues and the development of future policies and strategies concerning matters and events in which they may have a stake. In other words, what distinguishes a public inquiry from other types of investigations and policy reviews is that it is *public*: conducted in public view and with the participation of the public.

### *1.1.1 Two-Part Mandate; Two-Part Process*

Part 1 of the Inquiry followed the evidentiary hearing model. It was a fact-finding process through which I would make findings, based on the evidence heard, regarding the events surrounding the death of Dudley George. Part 2 was a policy-based review to fulfill the broader part of the mandate of the Inquiry; namely, to make recommendations on measures to avoid violence in similar circumstances. The two parts of the Inquiry were conducted simultaneously.

In this volume (Volume 1), I report on the facts and findings arising from the investigation. Volume 2 explores the policy issues underlying the events of September 1995 and contains my recommendations for avoiding violence in the future. The inquiry process is described in Volume 3, and Volume 4 is an executive summary, which includes all of my recommendations stemming from the Inquiry.

### *1.1.2 Principles Governing the Inquiry, and Additional Goals*

The principles that governed this Inquiry were similar to those of other public inquiries: thoroughness, expedition, openness to the public, and fairness. To get at the truth, and to meet the tests of impartiality and independence, the Inquiry had to be thorough. To inform the public and to restore public confidence, the Inquiry had to be conducted in an open forum, thereby ensuring that it would be transparent and open to public scrutiny. To ensure fairness, procedural safeguards had to be put in place and the Commission and the parties had to observe them. And finally, although the principles of thoroughness, openness to the public, and fairness were to be paramount throughout, the Inquiry had to be as expeditious as possible.

Throughout the process, my explicit and primary goal was to fulfill the two-part mandate as set out in the Order-in-Council. However, I also hoped to achieve



two additional goals through the Inquiry process. The first was to further public education and understanding regarding the issues surrounding the shooting death of Dudley George. The second goal was to contribute to the healing of those affected by the tragedy.

It should also be noted here that in light of the broad mandate of the Order-in-Council, I also committed to addressing the considerations of section 20 of the *Coroner's Act* in order to avoid unnecessary duplication of time and effort by the Office of the Chief Coroner for Ontario, which had the power to call an inquest into the circumstances of Mr. George's death.

### ***1.1.3 Approach to the Investigation***

In most investigative inquiries, the complexity of the task may not be apparent at the outset. Carrying out the investigation is not the difficult part. The difficulty lies in defining the task — articulating the “what” of it. Beneath an apparently straightforward set of circumstances might lie a multitude of matters which merit investigation.

The first part of my mandate was to investigate and report on the events surrounding the death of Dudley George. How narrowly or broadly I interpreted the requirement to investigate the events “surrounding” the death of Dudley George was critical.

The narrowest interpretation might have led me to investigate only the sequence of direct events and decisions in the immediate vicinity of Ipperwash Provincial Park, during the hours on September 6 immediately preceding the shooting in which Dudley George was killed. On the other hand, the broadest interpretation of events “surrounding” his death might have led me to an extensive investigation of the events and decisions which, in the years, decades, and even centuries before, might have directly or indirectly led to tragedy. Neither of these extremes would have been satisfactory. Nonetheless, defining the scope of the investigation was far from simple. In my view, the task was made more difficult by the number of years that had passed. In the years following the death of Dudley George, more and different issues and interests meriting consideration arose, beyond the facts of the shooting, which might not have arisen immediately after the event.

My decision regarding the scope of the investigation had an impact on many of my subsequent decisions, including my decisions on which individuals and organizations should be granted standing, which witnesses should be called to testify, and the extent to which examination and cross-examination by counsel would be helpful or relevant.

Although the precise limits of the investigation were not easy to define, commission counsel and I recognized at an early stage that the investigation would have



to take into account some of the history and circumstances of the Aboriginal people claiming title to Ipperwash Provincial Park. We began the investigation by calling two experts to provide an overview of the systemic or historical circumstances which may have contributed to the actions and decisions under investigation. Although many of these circumstances pre-dated the events that gave rise to calling the Inquiry, or could have appeared to fall outside its jurisdiction or mandate, my view was that they would shed light on and provide context for why those events occurred. I believed that this was the appropriate starting point for the parties and the public.

Following the historical overview of the land and the Aboriginal people, spanning the years from 1763 and the *Royal Proclamation* to 1942 and the appropriation of the Stoney Point Reserve for military purposes by the federal government, the investigation of the events “surrounding” the death of Dudley George moved to 1993 and the occupation of the federal army camp and barracks. The focus of the investigation then narrowed significantly, to the summer of 1995, and in particular the Labour Day weekend in September 1995 when Mr. George was killed, and also to examining some significant and relevant events in the days and weeks following the shooting.

Another challenge was to define the perspectives to be sought in the course of the investigation.

Commission counsel began by grouping the seventeen parties with Part 1 standing, and the witnesses to be called, into three broad categories of interests: Aboriginal, Ontario government, and OPP. This was intended to assist in determining the sequence of the witnesses and the order of cross-examination by the parties. Additional witness categories included emergency personnel directly involved with the events of September 1995, local cottage-owners, and federal government officials.

However, simply identifying these broad categories of interests did not diminish the complexity of the task. For example, there was not only one Aboriginal perspective on the events surrounding the death of Dudley George. Six parties had interests broadly defined as “Aboriginal,” all of which required exploration. Seven parties fell into the category of the Ontario government and two parties represented the separate management and association interests of the OPP. It was a challenge throughout to maintain the balance between the need to proceed efficiently and the need to elicit evidence which added details to the investigation or helped me test or verify the evidence of others.

In making these decisions, I was always mindful of the less tangible, but in my view, equally important attribute of a public inquiry; that is, healing. While

my main task was to conduct a thorough investigation, the process offered an opportunity for points of view to be shared, sometimes for the first time. This sometimes had a cathartic effect and I thought it was important for us to encourage this.

## 1.2 Process of Part 1 of the Inquiry

### 1.2.1 *Commission Counsel*

Soon after my appointment, I appointed commission counsel. The primary responsibility of commission counsel is to assist the commissioner in carrying out his or her mandate by representing the public interest at the inquiry and ensuring that all perspectives bearing on the public interest are brought to the commissioner's attention. Commission counsel provides advice to the commissioner throughout the inquiry and conducts and supervises the investigation from beginning to end.

In a public inquiry, an effective investigation requires considerable planning and preparation before the hearings can begin. I worked with my lead counsel, Derry Millar, to establish our team of lawyers and investigators. We chose a legal and investigative team that collectively had the knowledge, skills, and experience to deal with the issues we expected to cover in the Inquiry and to accomplish our objectives.

### 1.2.2 *Rules of Procedure and Practice*

Subject to fairness, a commissioner has broad discretion in conducting a public inquiry in a manner that best meets the mandate. This discretion extends to defining the rules that underlie the conduct of the inquiry.<sup>1</sup> Typically, these rules, commonly known as rules of procedure and practice, are developed early in the inquiry process so that the public and participants will know the “rules of the game.”<sup>2</sup> They address procedural matters such as the granting of standing and funding for interested parties, the disclosure of documents, and the calling of witnesses. The rules may also address practical matters such as the location and schedule of inquiry hearings and other activities.

We modeled our Rules on those of similarly structured public inquiries and in keeping with the general principles I had articulated for the Inquiry. Commission

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1 For example, *Public Inquiries Act*, *supra* note 5 at c.P.41.s.3.

2 *A Handbook on Public Inquiries in Canada*, *supra* note 4 at 69.



counsel invited the parties with standing to comment on the draft Rules and we posted the final version on our website.

### *1.2.3 Standing and Funding Applications and Decisions*

To be thorough and to obtain all relevant information and perspectives, public inquiries invite potential parties (interested individuals and groups) to apply for standing in the inquiry. Our Notice of Hearing, which was published in a number of national and local print media and on our website, invited applications for standing in one or both parts of the Inquiry. I assessed all of the applications for standing, and applications for funding from parties granted standing, against the test for standing and funding set out in our Rules. I heard the applications over four days in late April 2004, in the small town of Forest, Ontario, which is near Ipperwash Provincial Park.

I granted standing in the fact-finding phase to parties who demonstrated “an interest which is directly and substantially affected by the subject matter” in Part 1 of the Inquiry, or to parties who represented “distinct ascertainable interest and perspectives ... essential to the discharge of the Part 1 mandate.”<sup>3</sup> Seventeen parties met the criteria for standing in Part 1.

Seven of the seventeen parties granted standing in the evidentiary hearing phase of the Inquiry applied for funding, on the basis that without it, they would not be able to participate in the proceedings. Funding covered counsel fees and reasonable disbursements such as travel and accommodation expenses, as set out in the Ministry of the Attorney General’s fee schedule for outside counsel and the guidelines for disbursements established by Management Board of Cabinet. In accordance with the Order-in-Council, I recommended to the Attorney General that these seven parties be granted funding to make possible their participation in the Inquiry and he accepted my recommendations.

### *1.2.4 Location for Evidentiary Hearings*

The principle of public accessibility informed one of my earliest decisions regarding the Inquiry: where to hold the evidentiary hearings. With the benefit of input from counsel, staff, and the parties, I decided that the Inquiry should be held near the community most affected by the events being investigated. Accordingly, the hearings were held in the auditorium (Kimball Hall) of the Forest Memorial Community Centre, near Ipperwash Provincial Park.

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3 The entitlements and obligations of parties with standing are set out in sections A.II (Part 1) and B.II (Part 2), Appendix 2, Rules of Procedure and Practice.

### ***1.2.5 Broad Public Access to Hearings***

The technology available today affords great opportunity to ensure public access to the proceedings of a public inquiry. Our website was designed to offer current and complete information on all aspects of the Inquiry.

The website provided information on the parties with standing. During the evidentiary hearings, we also posted hearing schedules, transcripts of testimony, and my public statements and decisions on motions. The transcripts were posted on our website the same evening as the testimony was heard, and they were therefore available to counsel to assist them in preparing for the next day.

The website also included a “feedback” link to allow visitors to the site to convey their views and to share or seek information. In terms of public access, however, the addition of a link from our website to a live webcast of the hearings had the greatest impact. It became possible for interested individuals, anywhere in the country and beyond, to see and hear the proceedings of the Inquiry in real time. I am grateful for the assistance of counsel for the Estate of Dudley George and George Family Group for helping us to make this service available.

The webcast offered other benefits to the Part 1 process. Commission counsel and other commission staff could follow the proceedings, even when other responsibilities or cost considerations made it impractical for them to travel to Forest. The same advantage applied to counsel for the parties with standing.

In view of the importance of public access to the proceedings of a public inquiry, we also arranged for broadcast-quality taping of the hearings, from start to finish, by a local audiovisual company. This served as a pool feed for the electronic media covering the hearings.

### ***1.2.6 Disclosure and Management of Documents***

A public inquiry is afforded wide-ranging investigative powers. Among them is the power to collect or require disclosure of documents, and if necessary, to compel the production of documents through a summons or a search warrant from the court.

Parties with Part 1 standing were required to provide all relevant documents (defined broadly to include materials in written, electronic, audio, video, and digital form, as well as photographic or other visual materials such as maps and graphs) in their possession or to which they had access. The Commission treated documents received from parties or other sources as confidential until and unless they were made part of the public record.

More than 23,000 documents were scanned into the Inquiry database, assigned an Inquiry document number, and made available to the parties in electronic



format. Where appropriate and relevant, we had audio materials transcribed and made available to the parties. Counsel for the parties with standing were required to sign a confidentiality undertaking with respect to documents.

### 1.2.7 *Issues of Privilege*

During the hearings, the Inquiry dealt with many documents that were the subject of a privilege or privacy claim. A protocol for handling documents that were the subject of any kind of privilege or privacy claim was included in our Rules.<sup>4</sup>

Where a party asserted privilege of any kind, I directed the party to disclose the subject documents, in unsevered form, to commission counsel for review, with an explanation of the grounds on which privilege or privacy was asserted and the basis for the assertion. The review of these documents took place in the presence of counsel for the party asserting privilege, if requested by the party. On the few occasions where a party asserted privilege, I issued a summons<sup>5</sup> to the party to produce documents.<sup>6</sup>

In the course of reviewing documents over which privilege was asserted, commission counsel first considered relevance. If the document was not relevant and helpful to the discharge of the mandate of the Inquiry, then the document was returned to the party. If the document was deemed potentially relevant, but commission counsel agreed that the claim for privilege had been properly asserted (and not waived at law), then the document would either be returned in its entirety or maintained with the privileged sections severed (where feasible). Two options were available in the event of disagreement between commission counsel and a party regarding the validity of the privilege claimed (assuming relevance had been established): I could either order production of the subject documents for my inspection and ruling, or I could direct that the issue be resolved on application to the Regional Senior Justice in Toronto or his designate. Fortunately, no disputes arose which required this form of adjudication.

At the conclusion of the evidentiary hearing phase of the Inquiry, and in accordance with Rule 35, all parties were requested to return the electronic copy of the database, including any copies of any documents not made exhibits or belonging to the party. Only those documents made exhibits or those referred to during the hearings are part of the public record of the Inquiry. The originals of all documents disclosed over the course of the Inquiry were returned to the

4 Rule 32, Appendix 2, Rules of Procedure and Practice. Note that section 11 of the *Public Inquiries Act* (*supra* note 5) precludes admission of privileged matters into evidence.

5 Appendix 8(a), Summons to Witness to Attend and to Produce Documents.

6 *Public Inquiries Act*, *supra* note 5 at sec. 7(1)(b).

parties. In keeping with the archiving requirements of the Province of Ontario, the Inquiry retained copies in its electronic database, which was transferred to the Archives of Ontario at the conclusion of the Inquiry.

### ***1.2.8 Identifying and Preparing Witnesses***

In carrying out its investigation, a public inquiry is empowered to call witnesses to appear and testify under oath, and to produce documents identified by the commission. Without this authority to compel testimony and to produce documents, inquiries would be required to rely on the willingness of individuals to volunteer information. This could make it difficult, if not impossible, to uncover the truth.

The principles of fairness and thoroughness informed the selection of witnesses, and witnesses were called to testify if they could provide relevant and helpful information. However, this did not mean that all *possible* witnesses who had relevant and helpful information were called. The challenge throughout was the need to balance efficiency with ensuring that the investigation was thorough and fair.

Prior to testifying, one or more commission counsel and one or more of our investigators interviewed each witness and a transcript of key witness interviews was made. Given the number of years that had passed since the events in question, witnesses were given copies of documents from the Inquiry database before the interviews, when possible, to help refresh their memories. Information from one witness sometimes led to interviews of further potential witnesses. Also, on occasion, members of the public offered suggestions with respect to relevant witnesses. We considered each of these, and pursued the line of inquiry if we deemed it to be potentially helpful or relevant.

Under the Rules, witnesses called to testify at the Inquiry had certain procedural rights. For example, they had the right to be accompanied by counsel during the interview and to be represented by counsel when they testified.<sup>7</sup> Several witnesses availed themselves of this right.

### ***1.2.9 Summonses and Search Warrants***

Pursuant to the Order-in-Council, the Inquiry was empowered to issue summonses<sup>8</sup> to witnesses in accordance with Part II of the *Public Inquiries Act*.<sup>9</sup>

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<sup>7</sup> Rules 19 and 23, Appendix 2, Rules of Procedure and Practice.

<sup>8</sup> Appendix 8(b), Summons to Witness to Appear.

<sup>9</sup> *Supra* note 5 at sec. 7(1).



Pursuant to Part III of the *Act*, the Inquiry was also empowered to seek search warrants from a Justice of the Ontario Superior Court of Justice. On occasion, I issued a summons to a witness where the witness did not testify voluntarily, or when a witness requested a summons for other legitimate reasons such as to justify absence from work. It did not prove necessary to execute any search warrants.

The power to summons witnesses derived from a provincial statute, and while I had the power to issue summonses to individual employees or former employees of the federal government, I could not through them obtain documents relating to the areas of intended examination. These documents are in the control of the relevant Minister of the Crown in Right of Canada and, as a provincially appointed commissioner, I did not have jurisdiction to compel a Minister of the Crown in Right of Canada, in his or her official capacity, to appear and produce documents.<sup>10</sup> Although invited to do so, the federal government did not apply for standing in the Inquiry and was not subject to the obligations set out in the Rules. However, the federal government cooperated in providing documents. Also, the federal officials we called as witnesses testified voluntarily and gave evidence on matters relevant to the Inquiry involving Indian and Northern Affairs Canada and the Department of National Defence.

### *1.2.10 Notices of Alleged Misconduct*

Fact-finding, a key aspect of most public inquiries, carries with it the possibility that the evidence heard will affect individual or organizational reputations, particularly if the commissioner makes a finding of misconduct. The *Public Inquiries Act* affords legal protection to anyone who may be found by an inquiry to have been involved in misconduct. Subsection 5(2) of the *Act* provides that no finding of misconduct against a person may be made in the commissioner's report unless the person had received Notice of Alleged Misconduct (sometimes referred to as a "5(2) Notice") and had been given an opportunity to respond to matters described in the Notice.

To minimize anxiety on the part of a recipient, commission counsel, as a practice, started interviews by informing the potential witness of the statutory obligation of the Inquiry to issue Notices of Alleged Misconduct where warranted, and by explaining the meaning of "alleged misconduct" in accordance with the statute. Equally important, my counsel also informed the potential witness of what the Notice did not mean; that is, receiving one did not represent any prejudgment of my findings (if any) concerning the witness. In drafting the Notices therefore, we were careful not to use language that might be confused with potential findings of civil or criminal liability. Notices were delivered in confidence

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10 *Keable, supra* note 3.

to the persons or parties to whom they related and, whenever possible, we issued Notices before the individual gave his or her testimony, either directly or through counsel if the witness was represented. It is important to point out here, as did the Commissioner of the Walkerton Inquiry, currently the Associate Chief Justice of Ontario, the Honourable Justice Dennis O'Connor, that where I use terms such as "fault," "responsible," and "accountable," I do not intend, in this report, to reach any conclusions of law. Accordingly, readers should attach the normal, non-legal meaning to words of this nature.<sup>11</sup>

### ***1.2.11 Hearing Schedule***

Before the hearings began, and while the initial document analysis and the witness interviews were still in progress, commission counsel was already developing an overall framework for the hearings. Once again, the challenge was to develop an approach that would balance the need to fully understand the circumstances surrounding the death of Dudley George with our obligation to explore only what was necessary to meet the mandate of the Inquiry.<sup>12</sup> Throughout the hearings, commission counsel gave considerable attention to the hearing schedule, taking into account the need to achieve this balance, as well as a logical sequence for the witnesses and the likely time required for each.

We notified counsel of the witness schedule weekly and posted the schedule on our website. We began with a hearing week of Monday through Thursday, with two weeks of hearings followed by a one-week adjournment. The adjournment week allowed counsel for the parties to prepare for the witnesses scheduled for the next two-week session and to attend to other matters. It also allowed time for me and for commission counsel to address other inquiry business, including meetings related to the policy phase of the Inquiry, and to prepare for future witnesses. After several months, we adjusted the timetable by adding another hearing week to the cycle, so that the adjournment week followed three consecutive weeks of hearings. As time went on, hearing hours were added to each week. By the final month, we heard evidence every day, with only a few exceptions, in order to meet the ending date we had already announced.

### ***1.2.12 Evidence/Examinations***

Before each witness testified, commission counsel compiled a binder based on a comprehensive review and analysis of relevant documents in the Inquiry database and on the interviews our investigators and counsel conducted with the

11 The Honourable Dennis R. O'Connor, *Report of the Walkerton Inquiry*, Part 1, at 37, (Toronto: Queen's Printer for Ontario, 2002)

12 Appendix 14(n), Commissioner's Remarks, Final Day of Evidentiary Hearings, June 28, 2006.



witness. The binder included an outline of the anticipated evidence from the witness and all relevant Inquiry documents. Five copies of the binder were made: one for me, one for commission counsel conducting the examination-in-chief, one for the second commission counsel assigned to the witness, one for the registrar, and one for the witness. In accordance with the Rules,<sup>13</sup> commission counsel gave parties with standing an outline of the witness's anticipated evidence and a list of the documents likely to be referenced or filed as exhibits. We disclosed Inquiry documents to counsel for the parties electronically, which gave them electronic access to these documents in the hearing room.

Commission counsel called each witness and led the examination. In view of commission counsel's responsibility in a public inquiry to instil confidence in the impartiality of the inquiry in the parties and the public, it was important that this questioning be carried out fairly and even-handedly. On a number of occasions, counsel for a witness examined his or her own witness, after commission counsel's examination, to bring out issues in chief not led by commission counsel. Following commission counsel's examination, counsel for the parties had the opportunity to cross-examine the witness in an agreed-upon sequence. I made it a practice to canvass counsel for an estimate of the time needed for cross-examination. Counsel cooperated throughout in estimating and adhering to what I considered to be reasonable times. Following the cross-examinations, commission counsel re-examined the witness.

### ***1.2.13 Confidential Hearings***

The Inquiry hearings were generally open to the public. However, pursuant to the *Public Inquiries Act* (and also as set out in the Rules),<sup>14</sup> there were provisions for conducting hearing in private, if necessary, at my discretion.

There was one instance of in-camera proceedings during the Inquiry. This involved certain tapes of telephone conversations, which had not been made public and which commission counsel intended to introduce and did subsequently introduce through a witness who had been part of the conversation. Counsel for some of the parties brought a motion for the early public disclosure of these tapes. The motion was argued in public, but I heard the portion of the motion that dealt with the specifics of the conversations in camera so that the content of the tapes would not be disclosed prematurely.<sup>15</sup>

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13 Appendix 2, Rules of Procedure and Practice, Rule 37.

14 Rules 40 to 47, Appendix 2, Rules of Procedure and Practice.

15 Appendix 13(b), Commissioner's Ruling on a Motion by the Chiefs of Ontario and the Estate of Dudley George and George Family Group, October 12, 2004.

A witness could request that measures be taken to conceal his or her identity. If I found that a compelling reason existed, I could grant “confidentiality” status to the witness. Such measures could include referring to the witness by non-identifying initials rather than by name in the transcript, in other public records, and in my report.

There was one request for confidentiality regarding the identity of a witness. In the case of one OPP officer, counsel for the Ontario Provincial Police Association requested that the officer’s face not be photographed or webcast. The officer was involved in sensitive police work, which would have been jeopardized otherwise, and I agreed to the request for that reason. The parties fully supported my decision.

#### ***1.2.14 Commissioner’s Statements***

I made public statements from time to time when I felt it necessary to convey my views or expectations regarding the progress of the Inquiry to the media, to the public, and to counsel for the parties.<sup>16</sup> Among other things, I expressed my views on the purpose of public inquiries, the principles guiding the Ipperwash Inquiry, my expectations with respect to procedure, and the process. I repeatedly returned to the theme of balancing fairness and thoroughness with efficiency, including cost-efficiency. The text of these statements was part of the transcript of the day’s proceedings and was also posted separately on our website. Together, these statements provide a chronology of the progress of the Inquiry.

#### ***1.2.15 Closing Submissions and Replies in Part 1***

On March 30, 2006, I informed the parties that the hearings would be completed by June 29, and I described the procedures for closing submissions and replies. I invited all parties with standing in Part 1 to submit written closing submissions and, if they wished, to also make submissions orally. Parties also had the option of replying to the submissions of other parties with Part 1 standing.<sup>17</sup>

I asked the parties to file written submissions, in both a hard copy and electronic format, and to distribute them electronically to the other parties who participated in the hearings within one month following the conclusion of the evidentiary hearings. If the parties in Part 1 chose to reply to submissions by other parties with Part 1 standing, they were to deliver the written replies within two

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<sup>16</sup> Appendix 14, Commissioner’s Statements.

<sup>17</sup> Appendix 15(a), Memoranda to Parties with Standing re Closing Submissions Process: from Lead Commission Counsel to Counsel for Parties with Standing in Part 1 and Part 1 and 2, May 19, 2006.



weeks of that date, filing and distributing them in the same manner as the submissions. We posted all written submissions and replies on the website on the first day of the oral submissions. In the interest of fairness, I directed parties not to publish their submissions or replies before that date.

Once the parties choosing to make oral submissions had advised the Commission of their intention, we determined and circulated the order of presentation. I advised the parties that I would not allocate the unused time of one party to another party, and that at the conclusion of each party's submission, I would call the next party scheduled.<sup>18</sup>

All parties with Part 1 standing chose to make oral submissions, and I assigned each a maximum of either one or two hours to do so, depending on the nature and scope of the party's interest or perspective. They divided the time as they chose: to address the main points of their written submissions and/or to reply to the submissions of other parties. I heard oral closing submissions over the course of four days, August 21-24, 2006, in Forest.

At the conclusion of our investigation into the events surrounding the death of Dudley George, we had a database of 23,000 documents. The investigation lasted 229 hearing days (followed by the four days of oral closing submissions), during which we heard testimony from 139 witnesses, catalogued 1,876 exhibits, and produced over 60,000 pages of transcripts.

### *1.2.16 Aboriginal Traditions*

One of the procedural adjustments I made to the conventional public inquiry process was to add a traditional opening to our hearings for standing and funding to acknowledge the importance and significance of the traditions of Aboriginal Peoples. At the hearings, Aboriginal witnesses were offered the choice of being sworn to testify while holding an eagle feather, a symbol of truth, or while placing a hand on a bible.

To formally mark the conclusion of the hearings and as a symbolic conclusion of an important chapter in the events surrounding the death of Dudley George, we arranged a closing at Kimball Hall to bring together those who participated in the process. I invited Elder Lillian Pitawanakwat to conduct a traditional ceremony, as she had done at the opening of the hearings on standing and funding. At the closing, Aboriginal drumming groups representing three of the parties with standing at the Inquiry, the Chippewas of Kettle and Stony Point First Nation,

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18 Appendix 15(b) Memoranda to Parties with Standing re Closing Submissions Process: from Lead Commission Counsel to Counsel for Parties with Standing in Part 1 and Part 1 and 2, July 14, 2006.

the Residents of Aazhoodena and the OPP, performed together, as they had done spontaneously at another Inquiry event, the Indigenous Knowledge Forum organized by the Inquiry in September 2005. In my view, this was a meaningful and symbolic event.

### **1.3 Acknowledgements**

As is the case with any public inquiry, I owe considerable gratitude to a very long list of individuals who contributed to or participated in the investigative phase of the Inquiry. Although I acknowledged them by name and in some detail in the Inquiry Process volume of this report, I want to reiterate here my heartfelt thanks to all of them for their dedication, professionalism, and skill. However, I would like to mention again a few people who were key to the investigation phase of the Inquiry and to writing this volume of my report.

I am deeply appreciative of the exceptional leadership ability of my lead commission counsel, Derry Millar, and I am grateful to commission counsel Susan Vella and Don Worme. Each of them performed their duties with skill and professionalism throughout. They were assisted by associate counsel Katherine Hensel, Megan Ferrier, and, for a shorter time, Jodie-Lynn Waddilove and Rebecca Cutler. The counsel team had invaluable help from our investigators: lead investigator RCMP Inspector Rick Moss, retired RCMP officer Jerry Woodworth, and Detective Sergeant Anil Anand of the Toronto Police Service.

The experience and skill of my senior legal analyst, Ronda Bessner, were instrumental in assisting me to analyze the large volume of evidence heard and in preparing my report. Erin Stoik, Suzanne Sinammon, Julia Milosh, and Deirdre Harrington helped her at various times.

I also appreciated the cooperation of the parties, their counsel, the press, and the community for their contribution to the process and outcome of the Inquiry. While the process was challenging, and at times particularly demanding, I hope everyone involved found the experience to be as rewarding as I did.

### **1.4 Organization of this Volume**

This report begins with a history of Stoney Point and Kettle Point. Knowledge of the historical context is essential to understanding the reasons the Aboriginal people decided to occupy Ipperwash Provincial Park. This historical overview can be found in Chapters 2 to 5. The ancestors of the Kettle and Stoney Point people as well as what life was like on the Stoney Point Reserve are described. These chapters also review the historical relationship between the Aboriginal



people and the government, as well as the effects of the appropriation of the Stoney Point Reserve by the federal government in 1942 to establish an army training camp.

There were several attempts by Aboriginal people over subsequent decades to negotiate return of the Stoney Point Reserve but the Department of National Defence maintained that it needed the camp for military training. After decades of growing frustration, the former residents of the Stoney Point Reserve and their descendants decided to occupy the military ranges of Camp Ipperwash in May 1993 – described in Chapter 6. Meanwhile they persisted in their efforts for the return of the land.

In 1995, the occupiers' frustration increased because of the military's persistence in remaining on the land. At the end of July 1995, the Stoney Point people decided it was time to reclaim the army barracks which was done on July 29, 1995. This occupation is discussed in Chapter 7. Chapter 7 also discusses the reaction of the military, Kettle and Stoney Point First Nation, the OPP, and the government to the occupation of the army barracks and the potential occupation of Ipperwash Provincial Park after July 29, 1995 and during August 1995. It also includes the convening of a meeting of the provincial government's Interministerial Committee on Aboriginal Emergencies, placing undercover OPP officers in the park, the OPP meeting with MPP Marcel Beaubien and the activities of the MNR.

Chapter 8 deals with the planning by the OPP at the end of August 1995 and early September 1995 for the occupation of Ipperwash Provincial Park. The chapter describes the meetings held to develop the operation plan "Project Maple" to respond to the potential occupation of Ipperwash Provincial Park by Aboriginal people.

Chapter 9 examines the events that occurred on Monday September 4, 1995, when the Aboriginal people occupied the park.

Throughout the day on September 5, 1995, other Aboriginal people arrived at the park to support the occupiers. There was also an increase in police presence. That evening there was an altercation between police and occupiers over picnic tables the occupiers had brought into the sandy parking lot outside the park. These and other occurrences that day are documented in Chapter 10. Chapter 10 also examines the activities of the OPP and politicians and the Interministerial Committee meeting on September 5, 1995.

Chapters 11 to 18 examines the events of September 6, 1995: the day Dudley George was killed in a confrontation between the police and the Aboriginal occupiers.

Chapters 11 and 12 chronicle events during the day and early evening of September 6, including the removal by the police of picnic tables from the sandy parking lot, unsuccessful attempts by the OPP to communicate with park occupiers. Chapter 11 also reviews the activities at Queen's Park of the responsible ministers and civil servants and the Interministerial Committee meeting on Aboriginal Emergencies. It examines the meeting held in the Premier's dining room attended by the Premier, the Attorney General, the Solicitor General, the Minister of Natural Resources, their deputy ministers, political aides and seconded OPP officers.

The events of the evening of September 6, including the confrontation between the police and occupiers during which Cecil Bernard George was arrested and injured and Dudley George was shot and killed, are examined in Chapters 13 and 14.

Chapters 15 to 17 details the stories of some Aboriginal people, including Marcia Simon, Nicholas Cottrelle and Cecil Bernard George, immediately following the confrontation with the police.

After Dudley George was shot, his brother, sister and a teenager transported him to the hospital. Chapter 18 describes this drive and the arrest of the car occupants upon arrival at the hospital. Dudley George was "vital signs absent" when he arrived and could not be resuscitated. The findings of the autopsy and the medical care provided to him are examined.

Chapters 19 and 20 provide an overview of the events that occurred during the hours, days and weeks following the confrontation. I review the testimony of some of the Aboriginal people and police officers that spoke about the emotional and psychological impact of these events. Chapter 20 concludes with a review of the investigation into the inappropriate and culturally insensitive memorabilia that was procured and purchased by a number of police officers following the confrontation.

I conclude this volume with a summary of the answers to some of the more important questions raised by the events of September 1995, including the future of the land.





## HISTORY OF STONEY POINT AND KETTLE POINT

### 2.1 Expert Testimony at The Inquiry

Joan Holmes was called as an expert witness in Aboriginal ethno-history and Aboriginal–government relations at the Part 1 evidentiary hearings. She was also retained by the Inquiry to write a report on the history of Kettle and Stony Point<sup>1</sup> First Nation and the related reserves.

By way of background, Ms. Holmes has a master’s degree in Northern and Native Issues as well as a degree in Anthropology. In her twenty-one years of experience, her work has concentrated on the historical relationship between the Crown and First Nations. Ms. Holmes has testified as an expert witness in court proceedings and has acted under joint retainers for First Nations and the federal government.

Ms. Holmes is the author of many historical research studies on First Nations. She has examined the history of the Anishnabek<sup>2</sup> and Ojibway communities in the areas of Lake Superior, Lake Huron, Bruce Peninsula, and Manitoulin Island. The relationship of these communities with the British Crown before treaties were entered into has been a focus of her studies. Ms. Holmes has also examined treaty negotiations between these First Nations and the Crown both before and after Confederation. The different approaches of the Crown and First Nations people to the treaties, and the reserves that were lost as a result of surrender or expropriation, has been the subject of her work.

Ms. Holmes has studied the legislation prior to the *Indian Act* in 1876. She has also written on the development of the *Indian Act*, as well as the policies and practices of the Department of Indian Affairs.

Ms. Holmes was retained by the Commission to provide historical background on Kettle and Stony Point. She was asked to begin in the pre-treaty period and canvass the major events of First Nations people in this geographic

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1 When “Stoney” is used in relation to the Stoney Point Reserve, it is spelled with an “e.” When “Stony” is used as part of the name for the *Indian Act* Band Kettle and Stony Point First Nation, it is spelled without an “e.” In this report, “Kettle and Stony Point” refers to the people who resided at the two reserves and their ancestors.

2 Note: Anishnabek is also spelled Anishnaabek, Anishnabeg, and Anishnaabeg.



area. This included the establishment of the Kettle Point and Stoney Point Reserves, the treaties entered into with the government, and the loss of portions of these reserves to the Crown. It also included the appropriation of the Stoney Point Reserve by the Department of National Defence, and the response of the First Nations community to this government decision.

Ms. Holmes examined approximately 350 documents to complete this work. Most of the older documents are located at the National Archives of Canada. More recent material was accessed through the Department of Indian Affairs Central Registry.

Professor Darlene Johnston was also called as an expert witness at the Inquiry on Great Lakes Aboriginal history and traditions. Professor Johnston teaches Aboriginal Law, International Indigenous Law, Law and History, and Property Law at the University of Toronto Law School. Her Master of Laws thesis, “Litigating Identity: The Challenge of Aboriginality,” examined the evidentiary tests in Aboriginal rights litigation. Ms. Johnston received a Bachelor of Common Law (LL.B.) and Master of Laws (LL.M.) from the University of Toronto Law School, as well as a Bachelor of Arts (Honours) in History from Queen’s University.

Professor Johnston is the author of numerous articles and book chapters, the topics of which include Supreme Court of Canada jurisprudence on section 35 of the *Charter of Rights and Freedoms*, as well as the obstacles in using the Ontario *Cemeteries Act* to protect Aboriginal burial sites. She has written on the enfranchisement provisions in the *Indian Act*, as well as the ambivalence of many First Nations people toward the concept of Canadian citizenship. Professor Johnston was a land claims research coordinator for the Chippewas of Nawash and Saugeen First Nations from 1992 to 2001. She made submissions in 1989 and 1991 to the Standing Committee on Aboriginal Affairs at the House of Commons. Professor Johnston has presented papers at numerous conferences in Canada as well as the U.S. on such subjects as “Anishnabek Totemic Identity and Landscape,” and “Traditional Knowledge and Aboriginal Rights.”

Professor Johnston was asked by the Ipperwash Inquiry to provide historical and cultural perspectives on the Aboriginal people of the Great Lakes, particularly southwestern Ontario, and to examine the connection of these First Nations people to their land and burial grounds. She wrote a report for the Inquiry, “Connecting People to Place: Great Lakes Aboriginal History in Cultural Context.” To prepare this paper, Professor Johnston examined archival records, particularly those located at the Department of Indian Affairs. Professor Johnston provided expert testimony at the Inquiry’s evidentiary hearings. She is a descendant of the Great Lakes Aboriginal people.

## 2.2 The British Conquest and The Royal Proclamation of 1763

Both before and at the time of the British conquest of New France in the mid-eighteenth century, the ancestors of Kettle and Stoney Point were Chippewas<sup>3</sup> and Potawatomi living in the area of Lake Huron and the River St. Clair. After the Seven Years' War with New France in 1760, the British Crown became concerned about its relationship with First Nations people in this area. The British were intent on ensuring that the French remained out of this territory, and on securing control of the fur trade. In order to achieve these objectives, the British thought they should establish a co-operative and amicable relationship with First Nations people in this area.

The ancestors of Kettle and Stony Point, however, had more allegiance to the French at this time, whom they thought would eventually regain control from the British.<sup>4</sup> These First Nations people also believed that the British had been involved in fraudulent land deals. They consequently did not trust them and were concerned about establishing a relationship with the British Crown.

In 1763, King George III made the protection of Aboriginal land an official Crown policy. He issued a Royal Proclamation, also known as the Indian Charter of Rights.<sup>5</sup> The Proclamation established an "Indian country" where Aboriginal land was protected from encroachment or settlement. The Royal Proclamation established a territory beyond the settled colonies where land settlement was forbidden. This land had to be voluntarily ceded to the Crown before non-Aboriginal settlers could occupy it. The Proclamation was intended to impose the Crown between the settlers and the Indians in order to avoid exploitation.

The area occupied by the ancestors of Kettle and Stony Point lay within protected Indian country. As stressed in the expert testimony, the Royal Proclamation "is a very important document in Aboriginal history." First Nations people consistently refer to the Royal Proclamation and look to it "for their protection, and as a basis for their relationship with the Crown"; "it's a document that is well known, both amongst First Nations and amongst the Crown authorities."

Several important principles are contained in the Royal Proclamation of 1763, the most fundamental of which is that First Nations people are to be treated with honour and justice. As Holmes wrote in her report for the Inquiry, "[t]he British made these rules because they believed that fair and open negotiations

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3 Name given to the Anishnabek people by the British.

4 Throughout the French regime in the Great Lakes area, from 1615 to 1670, the Anishnabek and the French were close allies.

5 It is also now referred to as the Magna Carta of the Indians of Canada.



over Aboriginal land would help establish and keep peaceful relations with the Indian nations living under their protection.”<sup>6</sup>

The British created an Indian Department at this time under the guidance of Sir William Johnson. Its purpose was to manage Indian affairs on a uniform basis in conformity with the principles enunciated in the Royal Proclamation of 1763.

## 2.3 The Treaty of Niagara — The British Offer Two Wampum Belts

Sir William Johnson of the British Indian Department was discharged with the responsibility of circulating copies of the Royal Proclamation to the Aboriginal peoples in the Great Lakes area and of securing an alliance with the Anishnabek people.

In 1764, Sir William Johnson met with more than 1,500 Anishnabek Chiefs and warriors at Niagara Falls. As explained by Professor Darlene Johnston, the Treaty of Niagara was not written in alphabetic form; rather it was done according to Aboriginal protocol with the delivery of speeches and wampum belts.

Sir William Johnson consummated the alliance with the Anishnabek with the delivery of “two magnificent wampum belts” accepted by the Aboriginal people. He offered the “[G]reat Covenant Chain Belt” to the Anishnabek and promised they would not become impoverished and their lands would not be taken:

My children, I clothe your land, you see that Wampum before me, the body of my words, in this the spirit of my words shall remain, it shall never be removed, this will be your Mat the eastern Corner of which I myself will occupy, the Indians being my adopted children their life shall never sink in poverty.

The “Mat” refers to Indian country. The Anishnabek promised in turn to be loyal and to support the King in both peace and war.

The British offered a second wampum belt, the “Twenty-four Nations Belt,” also accepted by the Anishnabek. “The twenty-four human figures represent the Anishnabek Nations drawing a British vessel laden with presents from across the Atlantic and anchoring it to North America.” The Twenty-four Nations Belt contained the following promise:

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6 Ipperwash Commission of Inquiry Historical Background, prepared by Joan Holmes & Associates, Inc., June 2004.

My children, see, this is my Canoe floating on the other side of the Great Waters, it shall never be exhausted but always full of the necessities of life for you my Children as long as the world shall last.

Should it happen anytime after this that you find the strength of your life reduced, your Indian Tribes must take hold of the Vessel and pull, it shall be all in your power to pull towards you this my Canoe, and where you have brought it over to this Land on which you stand, I will open my hand as it were, and you will find yourselves supplied with plenty.

Professor Johnston explained:

These two belts, and the promises embedded in them, form the foundation of the British-Anishnaabeg Treaty Alliance. Subsequent agreements must be read in light of these original promises of protection and sustenance.

The British distributed presents each year as a symbol of the alliance the British had with the First Nations people.

It is important to understand that “[i]n the customary law of Anishnaabeg, once a promise is confirmed by the delivery of a wampum belt, it becomes sacred and inviolable.” But as the expert witness states in her report, “[a]lthough Sir William Johnson had promised that the English only needed the eastern corner of the Great Lakes Region, their demand for land soon increased, especially following the American Revolution.”

## **2.4 Burial Grounds and Totemic Identity of the Anishnabek People**

Anishnaabeg attachment to lands can be related to a corresponding attachment to the graves of ancestors. Because the Living are obliged to care for the Dead, proximity to family burial grounds is extremely important ... [T]here is a connective force in burial traditions. They tell us much about Anishnaabeg understanding of human beings, their bodies and souls, and their connection to land and their ancestors, both human and other than human.

Samuel de Champlain, who arrived in Georgian Bay in early 1615, made some of the first observations about Aboriginal burial practices. He described Anishnabek



cemeteries and provided details of the tombs of men, women, and children. He also discussed the Feasts held for the Dead.

The Jesuits were also interested in the burial practices of the Anishnabek people and the attachment of the Living to the Dead. The Jesuits observed that the Aboriginal people were buried in their native country, not the place at which they died. Bodies were transported great distances to their native areas if, for example, Anishnabek died during a military endeavour. The Jesuits were also “mystified” by the “ongoing care that the Aboriginal people took of the graves,” and the “attention which Aboriginal people showed towards their Dead.” Professor Johnston said:

In the Christian tradition, the unitary soul separates from the body at death and the body, devoid of spirit, is presumed to return to dust. It became clear to the Jesuits, however, that for Aboriginal people, the remains of their Dead retained a spiritual essence which required ongoing respect.

The “Anishnaabeg believed that some aspects of the person travel to the land of the souls,” but “a spiritual essence ... remained with the bones and with the remains” of the deceased. This created a continuing obligation on the part of the Anishnabek to care for their dead ancestors.

Professor Johnston explained the connection between totemic identity and the soul that remains with the body. The Aboriginal people in the Great Lakes area have a totemic or clan system that is patrilineal. Children are born into the clan or dodaim of their father. The Anishnabek belong to clans such as the Beaver, Crane, and Caribou. They believe they derive from animals. In Aboriginal culture, there is an “interconnection ... between people and the animals” and “the land.” The dodaim or totemic identity is inscribed on the grave posts rather than the personal name of the deceased. As Professor Johnston said, “[f]or the Anishnaabeg, the Great Lakes region is more than geography. It is a spiritual landscape.”

Anishnabek people have obligations to feed and shelter the dead. There are “very clear rituals” regarding the graves, the location of the cemeteries, and the obligation of the Living to visit and Feast the Dead. Aboriginal children from a young age are taught these rituals and responsibilities to their ancestors. Professor Johnston said in her testimony:

I think that this notion of a soul of the bones is actually the key to understanding Anishnaabeg burial practices and the reverence with which the remains are treated after death, and the abhorrence of grave disturbances which persists among Anishnaabeg people.

Unfortunately, the English settlers did not share the Anishnabek reverence for the gravesites. As early as 1797, colonial officials found themselves in the position of having to take steps to prevent grave robberies of the Aboriginal people. But disturbances of Aboriginal burial sites continued.

## 2.5 The Huron Tract Treaty

### 2.5.1 *Early Negotiations*

Indian Nations from the Great Lakes came forward in large numbers to assist the British against the Americans in the War of 1812.<sup>7</sup> After the War of 1812 in what was then Upper Canada, the British were concerned that the area north of Lake Erie and south of Lake Huron was vulnerable to attack by the Americans. As a result, they wished to bring settlers into this area, in what is presently southwestern Ontario.

In accordance with the Royal Proclamation, the British were required to take cession<sup>8</sup> of the land from the Aboriginal people in order to bring settlers to this geographic location. Over a nine-year period, there were negotiations that culminated in the Huron Tract Treaty.

In 1818, the Lieutenant Governor of Upper Canada, Sir Peregrin Maitland, designated a block of land to be settled, which he believed was 712,000 acres. This land was along the southeast shore of Lake Huron and the River St. Clair, and it later became known as the Huron Tract. Maitland asked the Deputy Superintendent General of Indian Affairs to obtain information on the Aboriginal people who owned the land and to learn what was necessary to secure a cession of that area.

The Deputy Superintendent General of Indian Affairs sent a message to John Askin, the Indian Superintendent at Amherstburg. Mr. Askin, whose mother was Aboriginal, spoke Adolwal, an Algonquin language. He was born in the Michilimackinac area, near the straits beyond Lake Huron.

Mr. Askin called the people to a Council meeting in Amherstburg in 1818 to discuss the cession of their land. He met with twenty-four Chippewa Chiefs and leaders from Chenail Ecarte, the St. Clair River, Aux Sable River,<sup>9</sup> the Thames River, and Big Bear Creek.

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7 They were led by Chief Tecumseh.

8 Joan Holmes explains that the terms “to cede land,” “land cession,” and “reserves surrender” are terms used to describe an action or transaction by which Aboriginal people have given over certain rights in their traditional lands or reserve lands to the Crown.

9 Later known as Stoney Point Reserve.



After listening to Mr. Askin's request on behalf of the Crown, Chief Chawne, as the representative of the assembled Chiefs, asked to retain specific reserves with the proviso that the land would be increased if the reserve proved to be too small. The Council Minutes state:

And we trust that the reserves now made by us will be augmented at the time the purchase is finally concluded, should our Great Fathers Representatives see that they are insufficient for the whole of our nation now living on this side of the waters to plant corn and hunt, so that we may not be poor and miserable like our Brethren on the American side, who have sold all their Lands and have not made sufficient Reserves for their men, women & children to plant corn.

Compensation in money and clothing as well as the services of a blacksmith and an agricultural instructor were also requested.

It is apparent from these Council Minutes that the Chippewa were deferential to the British and trusted that the government would protect their interests and fairly compensate them for their land. Note in the Council Minutes the Aboriginal metaphor of father and child, founded on a relationship of trust and one in which a father has obligations to his child.

Father We Chippewas have always been obedient children and never refused anything our Great Father has required of us. We are therefore willing to sell our Lands, but we wish to make the following reserves.

Another expression of trust is evident in the minutes of the 1818 meeting at which the Chippewas asked the British to assess the valuation of the tract of land.

Father You will inform our Great Fathers representative that it [*sic*] our wish he himself set the valuation on the Tract required, but that the Payment is to be made annually for 50 years, half in hard money & half in cloathing [*sic*].

### ***2.5.2 The 1819 Provisional Agreement***

Mr. Askin met with eighteen Chippewa Chiefs again in March 1819 and a provisional agreement was entered. The land sought by the British was in fact 2.7 million acres, not the 712,000 acres previously estimated by Maitland a year earlier. This was a significant difference. The Aboriginal Chiefs again asked for the following reserves:

- four miles square below the rapids of the St. Clair River, later known as the Sarnia Reserve or Upper Reserve;
- one mile by four miles bordering the St. Clair River, later known as Moore Township or the Lower Reserve;
- two square miles at the River aux Sauble, later known as the Stoney Point Reserve; and
- two miles at Kettle Point Lake Huron, later known as the Kettle Point Reserve.

The 1819 Provisional Treaty was sent to the Imperial government for its approval. It was not granted. The Chippewas had asked for half of their compensation in money and the other half in goods. The British refused to make cash payments, and as a result, the agreement for the Huron Tract cession was not approved.

### *2.5.3 The 1825 Provisional Agreement*

The new Indian Superintendent James Givens, who succeeded John Askin, tried to consummate a second provisional agreement. In 1825, a new provisional agreement was entered into by twenty Chippewa Chiefs at Amherstburg, known as “Surrender 27½”. Compensation to the Chippewas was reduced. Moreover, it was stipulated that if the Indian population decreased by half, the amount of the annuity would be reduced by half; the annuity would continue to decrease based on further population declines. But there was no corresponding clause if the Indian population increased in size. The Imperial government approved the 1825 provisional agreement.

Mahlon Burwell was retained to survey the ceded tract as well as the reserves. This was to ensure that when the treaty was signed, it contained a proper description of the boundaries.

### *2.5.4 The Signing of The Huron Tract Treaty in 1827<sup>10</sup>*

Two years later the Huron Tract Treaty confirmed the provisional agreement. Eighteen chiefs signed the Treaty in 1827 in Amherstburg. Of these eighteen Chiefs, nine had attended the 1818 Council, ten had signed the 1819 provisional agreement, and sixteen had signed the 1825 agreement.

In the Huron Tract Treaty, the Chippewas ceded 2.1 million acres of land to the Crown. They retained less than 1 percent of land for their exclusive use and occupation. The acreage of each of the four reserves were:

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<sup>10</sup> Also known as Treaty 29.



- Mouth of the River aux Sable on Lake Huron (Stoney Point) — 2,650 acres
- Kettle Point on Lake Huron — 2,446 acres
- Upper Reserve or Sarnia on the St. Clair River — 10,280 acres
- Lower Reserve or Moore Township on the St. Clair River — 2,575 acres

The compensation was £1,100 or \$4,400 in goods each year. This was contrary to the initial Chippewa request for half goods and half money. The population of Chippewas at the time of the 1827 Treaty was 440. This worked out to compensation of \$10 per person each year. As Joan Holmes notes, this was two months' salary for an Indian interpreter.

Again, the Treaty stipulated that if the population fell to less than half, there would be a proportional decrease in the annuity. And again, there was no provision for an increase in the annuity if the Chippewa population rose beyond 440. This is because the British Crown believed that the Aboriginal people would ultimately disappear. But contrary to expectations, the Aboriginal population steadily increased.

The annuity in goods was not distributed to each person. Rather the Crown delivered the goods in bulk to the Chiefs each year, who were responsible for distributing these items to their people.

The outcome for the Chippewas of the nine years of treaty negotiations was as follows. The Chippewas received a very small proportion of the land in this area, and less compensation than requested. Moreover, the Crown refused to pay cash for the loss of the land. The Aboriginal people had no assurance that the compensation would not decrease, and to exacerbate the situation, if the Chippewa population grew, the Crown would not increase the yearly stipend to accommodate additional members of these Aboriginal communities. The Holmes Report states:

Finally, after nine years of repeated discussions, the Chippewas of Chenail Ecarte (Walpole), River St. Clair (Sarnia), River Aux Sauble (Stony Point and Kettle Point) ceded an area at first thought to contain about 712,000 acres but actually covering more than three times that amount of land. When they first met in 1818 the Chiefs asked for specific reserve locations which could be enlarged if found too small to support the people; in the final treaty they were left with less than one percent of their traditional territory with no provision for expansion. Furthermore, after surveying the tract, prior to the confirmation treaty in 1827, the acreage of the reserves had been reduced to 75 per cent of the acreage quoted in the 1825 provisional agreement. At the opening of the negotiations in 1818 they asked the King's representative to set the appropriate compensation, trusting in his

good will and sense of justice. The initial offer of £1,375 (\$5,500) was reduced to £1,100 (\$4,400) and the provision of a blacksmith and an agricultural instructor was omitted.

In summary, the Chippewas relinquished to the Crown 99 percent of their traditional territory, retaining only 1 percent of their land.

## 2.6 The Early Administration of the Huron Tract

After the Huron Tract Treaty was signed in 1827, the British Indian Department became more involved in the administration of the Aboriginal communities. The government treated the Chippewas from the different reserves that had signed the Treaty as one large band that had a shared interest in the four reserves. The Indian Department described it as a common and undivided interest. This meant that each signatory to the Treaty and his descendants had an interest in each of the four reserves. But this created significant problems for the Aboriginal people: “[t]he treatment of these people as a large single band was a source of dispute and contention for almost a century.” Signatories to the Huron Tract Treaty had a right to reside on any of the reserves and equal right to the use of the £1,100 annuity. Although the Chippewas were treated as one band by the British government, they lived in different locations and had different Chiefs and headsmen. At the time of the Treaty, there were eighteen Chiefs for the population of 440 Chippewas.

Beginning in 1836, Walpole Island community wanted to separate from the other Aboriginal communities in the Huron Tract Treaty. From this time, Walpole Island was unofficially separate from and no longer involved with the other reserves. In 1860, the formal separation of Walpole Island from the band became official. The Walpole Island community received its proportionate share of the annuity based on the size of its population.

The population of the Chippewas in 1845 was:

Walpole Island (Chenail Ecarte) — 319

Sarnia — 259

Kettle Point — 27

Sauble (Stoney Point) (Quaykigouin’s Band) — 49

Sauble (Stoney Point) (Wapagase’s Band) — 35

There were other Chippewas who did not wish to be part of the one large band established after the Huron Tract Treaty. The communities residing at the Kettle Point and Stoney Point Reserves were dissatisfied with the influence of the



Sarnia Reserve. Sarnia had more than twice the population of the other reserves and consequently had more power and influence in terms of decision making. Moreover, the Indian Superintendent was stationed in Sarnia, and all the Council meetings were held on the Sarnia Reserve. In fact, the Department of Indian Affairs referred to the Aboriginal people living at the different reserves in the Huron Tract as the “Sarnia Band.” Beginning in the 1880s, the people at Kettle Point and Stoney Point Reserves agitated to be separated from the Sarnia Reserve.

Indian Department policies at this time heightened tensions between the Sarnia Reserve and the Kettle Point and Stoney Point Reserves. The Indian Department initiated a program designed to encourage the reserves to subdivide their land into separate lots. Individual families would be given a location ticket, which in essence was a permit to use a particular piece of land. The objective of this program was to encourage First Nations to adopt an individualistic lifestyle and to farm — “basically to be like white people.” Professor Johnston described it as “quite an ambitious plan ... ‘to civilize the Indians,’ to get them to become sedentary, live in one place, become farmers, become Christians.” The Indian Department wanted Aboriginal people to relinquish their traditional way of life. The “struggle” of the Aboriginal people is further described by Ms. Holmes:

... people felt that they did not want their reserve subdivided, they wanted to maintain a kind of a lifestyle and a land use and ownership system, which was more traditional to them, and in which individuals had ... a right to go around the reserve land, to use resources, to reside where they wanted to.

So, it becomes, in some sense, a bit of a struggle between maintaining a more traditional approach to land use and occupation, or adopting the Indian Affairs regime of the subdivision of reserve of the ... settling and the location system. So, that’s in part what’s going on ... behind that struggle.

Many First Nations people resisted the subdivision program of the Indian Department. They wished to preserve their traditional lifestyle and land ownership system; to use whatever resources existed on the reserve and to reside where they wished.

Sarnia agreed to have its reserve subdivided and pressured the people at Kettle Point and Stoney Point to do the same. The people in these two smaller communities felt threatened because Indian Affairs considered them all as one band. When the band voted at Council, the Kettle Point and Stoney Point people were greatly outnumbered by the community at the Sarnia Reserve, which had double

the population. Kettle Point and Stoney Point residents felt “overwhelmed and bullied by the people at Sarnia, who want this done”; “they were outnumbered, they could never, in essence, win a vote, if people on the Sarnia Reserve had a different opinion than they did.”

Throughout the 1880s and 1890s, there were petitions from people at Kettle Point and Stoney Point who did not want their land subdivided. There were also petitions asking for the separation of the Sarnia Reserve from the Stoney Point and Kettle Point Reserves.

In September 1885, for example, the Chief of the Stoney Point Reserve, John Johnson, and the Chief of Kettle Point Reserve, Adam Shahnow, sent a petition to the Superintendent of Indian Affairs. It discusses the friction between the Sarnia Reserve and the Stoney Point and Kettle Point Reserves. It describes the disparity in population and differences in the amount of land between the reserves.

They complain that there had been large expenditures for the Sarnia Reserve in contrast to the Stoney Point and Kettle Point Reserves, which were in great need of roads, bridges, and a schoolhouse. The petition also stresses that the interests of people on the reserve in Sarnia were very different from the interests of Aboriginal people on the Kettle Point and Stoney Point Reserves. Because of the large population in Sarnia, Council decisions reflected the interests of the Sarnia Reserve and did not adequately consider the needs or desires of the Stoney Point (Sauble) and Kettle Point people. The petition ends with this statement:

This petitioner therefor pray that the Kettle Point and Sauble Reserves may be separated from the Sarnia Reserve and that they may have control as one band of all monies to which they are from time to time entitled to from the Crown and their share of any monies now held by the Crown in trust for them.

The following segment of this petition illustrates the perceived inequities between the Sarnia Reserve and the Stoney Point and Kettle Point Reserves:

The Petition of John Johnson Chief of the Sauble Indians and Adam Shahnow Chief of the Kettle Point Indians and other Indians of the same bands Hereby Sheweth

1. That the Indians of the Sarnia, Kettle Point and Sauble Reserves have been united and treated as one band in any dealings the Department of Indian Affairs from time to time have had with them.
2. The lands of the Kettle Point and Sauble Indians are distant about thirty-five miles from the Council House on the Sarnia Reserve



and the interest of the Indians at Kettle Point and Sauble are not at all identical with those of the Sarnia Reserve.

3. The Sarnia Reserve Indians number about 400 while those of Kettle Point and Sauble number about 188.
4. There are about 8000 acres on the Sarnia Reserve and about 2400 on the Sauble and Kettle Point Reserves.
5. Our Council governs the affairs of the Indians of the three Reserves and heretofore owing to the preponderance in numbers of the Sarnia Indians wherever grants have been voted by the Council to be expended in improvements for the general benefit of all the Indians of the three Reserves it has been ...

... which we would mention the building of Roads and bridges about \$1000 in two years, culvert [illegible] etc a schoolhouse. Two houses for two aged Indians of the Sarnia band costing \$200, the cost of brass instruments for a band and \$150 to a bandmaster none of these expenditures benefited in the slightest extent the Indians of Kettle Point and Sauble Reserves – but being in a minority they could not prevent the expenditures being made.

6. On the Sauble and Kettle Point Reserves no money has ever been expended on roads or bridges nor is there a school house in the Sauble Reserve all of which wants are very seriously felt.
7. Since the year 1869 constant efforts have been made by the Indians of the Sarnia Reserve to have the timber of the Kettle Point and Sauble Reserves surrendered to the Crown so that they might share in the benefit to be derived by the sale of same and in the month of June last at a general meeting of Council it was resolved although strongly opposed by the Kettle Point and Sauble Indians that the said timber should be surrendered to the Crown.
8. There is constant friction and discord between the Indians of the Sarnia Reserve and those at Kettle Point and Sauble and they never have been able to pull together ...

Despite opposition by the Kettle Point and Stoney Point Reserves, the Sarnia Reserve initiated a resolution on the subdivision of the reserves. Council, dominated by the members of the Sarnia Reserve, passed this vote in 1901. It was also decided that fifty acres in the southeast corner of the Stoney Point Reserve would be given to the Potawatomis, the “American Indians.” It was referred to as

the “final gift.” Despite the controversy and opposition by the Kettle Point and Stoney Point Reserves to the loss of the fifty acres, an Order-in-Council was passed that approved this decision as well as the subdivision of the reserves.

The First Nations Potawatomis were sent to the small fifty-acre parcel of land. They felt displaced and isolated according to historical records. As a result, many Potawatomis returned to the United States. A brief history of the Potawatomis in this region follows.

## 2.7 The “American Indians” Debate

From the 1790s to the 1840s, the British Indian Department invited Indian allies living on the American side of the boundary to move to Upper Canada. The British informed the American Indians that if they did not settle in Upper Canada, they would no longer receive presents from the Crown. Some Potawatomis and Ottawas who immigrated in that period settled amongst the Huron Tract communities. The American Indians were referred to as “Potawatomis.”

As explained by Ms. Holmes, the term “American Indians” is not accurate. It refers to Aboriginal people living on the American side of a political boundary that did not historically exist. The Ottawas, Chippewas, and Potawatomis traditionally lived and hunted on both sides of the border; they moved throughout the Great Lakes region. The boundary was established in the mid-1790s after the American Revolution. The creation of the border resulted in the labels “American Indians” and “British Indians.” But as Holmes says, “in fact, they’re the same people. They just happened to be on either side of a border which was imposed by other government[s].”

By 1840, British officials had become concerned about the number of people immigrating from the American side. S.B. Harrison, the Civil Secretary to the Lieutenant Governor of Upper Canada, writes the following in October 1840:

The attention of the Lieutenant Governor having been called to the fact that a very considerable immigration of Indians into the Province has taken place, and is still continuing has after serious consideration come to the conclusion that it is by no means consistent with the good of the country that a large body of Indian population should take up their residence within it ...

It is clear that by 1840, the government did not want to promote immigration of Aboriginals from the American side.

In 1871, the Department of Indian Affairs issued a declaration regarding those American Indians who were entitled to share in the annuities or the treaty



rights of the Chippewas of the Huron Tract. Aboriginals who had come to Canada on the invitation of the British shortly after the Canada–U.S. border was established were permitted to a share of the annuities and the interest money. Those who had recently immigrated were not entitled to receive treaty benefits and did not have a right to live on the reserve.

In its 1871 decision, the government is declaring which Aboriginal people have particular rights, and those who are not eligible for any benefits or entitlements. Four years after Confederation, the Dominion government is beginning to classify who are and are not Indians, who are and are not governed by the treaties, and who are and are not considered members of a Band. These government decisions and classification created significant tensions in the Aboriginal communities:

... the creation of the these classes of people on Kettle and Stoney Point and Sarnia, in terms of whether they are ... the old guard Chippewa, who have always been on British territory, or if they are people who came from the American side ... that classification is being intensified and brought to the fore, and it's obviously resulting in tensions within the community about what rights these people should have ...

... the categories and the classification of people becomes a major source of discord.

## **2.8 Federal Government Attempts to Assimilate First Nations People**

Like its predecessors, the Canadian government as early as Confederation wanted First Nations people to assimilate into the population.<sup>11</sup> As stated in the report of the Royal Commission on Aboriginal Peoples:<sup>12</sup>

The first prime minister, Sir John A. Macdonald, soon informed Parliament that it would be Canada's goal "to do away with the tribal system and assimilate the Indian people in all respects with the inhabitants of the Dominion."<sup>13</sup>

11 Aboriginals did not participate in the Confederation debates: Darlene Johnston, July 14, 2004.

12 Ex. P-10, 1996 Report.

13 Quotation from Malcolm Montgomery, "The Six Nations Indians and the Macdonald Franchise", *Ontario History* 57 (1965), p. 13. Found in Ex. P-10, Royal Commission Report on Aboriginal Peoples.

Through federal legislation, the government “crafted educational systems, social policies and economic development plans designed to extinguish Aboriginal rights and assimilate Aboriginal people.”<sup>14</sup> Through the *Enfranchisement Act* of 1869 and the *Indian Acts* in the 1870s and 1880s, “the federal government took for itself the power to mould, unilaterally, every aspect of life on reserves and to create whatever infrastructure it deemed necessary to achieve the desired end — assimilation through enfranchisement and, as a consequence, the eventual disappearance of Indians as distinct peoples.”<sup>15</sup>

The government actively encouraged First Nations people to enfranchise. Under this policy, people who relinquished their Indian status were given a portion of the reserve lands.<sup>16</sup> The government hoped that over time, as First Nations people enfranchised, the reserve lands would continually shrink and eventually disappear.

Initially, the early legislation provided for voluntary enfranchisement. The Crown soon became aware that most First Nations people would not willingly relinquish their status. As a result, in 1876, in the first consolidated *Indian Act*, the government introduced involuntary enfranchisement. Indian women, for example, who married non-registered men, lost their status. Also, individuals who had a certain level of education or professional designation, such as doctors, lost their Indian status. These “non-status” persons, as they were called, no longer had a right to reside on the reserve, to take part in band politics, to vote, to run as a candidate in an election, or to be buried on the reserve. This created tension within communities and fragmented families. It had a significant impact on First Nations people.

Although involuntary enfranchisement<sup>17</sup> was finally removed in 1985 as a result of the Canadian *Charter of Rights and Freedoms*, the *Indian Act* continues to retain two categories of status Indians and the concept of non-status persons.<sup>18</sup> First Nations people in Ontario as well as other parts of Canada continue to fear that the status Indian population will decrease over time and that First Nations people will gradually become assimilated into the larger Canadian population.

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14 Ibid-Royal Commission Report, Ex. P-10.

15 Ibid-Royal Commission Report, Ex. P-10.

16 Joan Holmes, August 19, 2004, p. 70–73. See also *Report on the Royal Commission on Aboriginal Peoples* (1996), (Vol. 1), Department of Indian and Northern Affairs.

17 Note that in the Supreme Court of Canada decision *Attorney General Canada v. Lavell*, [1974] S.C.R. 1349, section 12 (1) (b) *Indian Act*, the provision on Aboriginal women who married non-Indians was unsuccessfully challenged under the *Canadian Bill of Rights*.

18 For example, offspring from a parent who is a Section 6 (2) Indian and a parent who is non-Aboriginal do not have Indian status.



For more than twenty years, Duncan Campbell Scott was an influential federal official who oversaw and implemented Indian policy in Canada. He was the Deputy Superintendent General of Indian Affairs from 1913 to 1932. One of the main objectives of the Indian Department, espoused by Scott, was to institute measures to ensure the assimilation of First Nations people.

Mr. Scott was the Deputy Superintendent General of Indian Affairs when the Ipperwash parklands were surrendered in 1928. He was also the Deputy Superintendent General of Indian Affairs when the Sarnia Reserve was separated from the Kettle Point and Stoney Point Reserves.

## 2.9 Separation of Stoney Point and Kettle Point from the Sarnia Reserve

After years of agitation and receiving petitions from the First Nations people, the Department of Indian Affairs finally agreed to divide the Kettle Point and Stoney Point Reserves from the Sarnia Reserve. The Department of Indian Affairs created two *Indian Act* bands: the Sarnia Band, which retained the Sarnia Reserve and a per capita share of the annuity and trust fund, and the Kettle and Stony Point Band, which in turn kept their reserves and their proportionate share of the annuity and trust fund based on their respective population. The creation of these bands was formally approved by Order-in-Council on May 1, 1919.

Why did the government finally consent to the separation of these reserves? The Department of Indian Affairs was interested in obtaining a surrender of part of the Sarnia Reserve for the purpose of expanding the City of Sarnia. It wanted this property for “development purposes.” The government believed this could more easily be accomplished if Sarnia was separated from the other two reserves. In 1919, the Deputy Superintendent General of Indian Affairs wrote:

The attached memorandum to His Excellency in Council is a good advance towards obtaining a surrender of a portion of the Sarnia reserve, which the Department is endeavouring to accomplish. The diverse interests of the two sections of the band prevented a majority vote on any question of importance ...

When the agreement is accepted by His Excellency in Council we will be able to deal separately with the bands, and will, no doubt, in due course obtain a surrender of the Sarnia band of the portion of the reserve which is required for the expansion of the city of Sarnia.

## 2.10 Land Surrenders at Kettle Point and Stoney Point Reserves

### 2.10.1 *The Surrender of the Shoreline at Kettle Point Reserve*

Beginning in 1912, there was pressure on First Nations people to surrender the beachfront at the Kettle Point Reserve for recreational development and for settlement.

It was in 1927 that MacKenzie Crawford, a local land developer, indicated to the Indian Agent that he wished to buy part of the beachfront at Kettle Point Reserve. Both the Indian Agent and the Department of Indian Affairs were favourably disposed toward the surrender of this land, which in their view had little value as it could not be used for agricultural purposes.

The Chief of the Band sought the advice of the Department of Indian Affairs as to whether the reserve land should be surrendered. It is also noteworthy that the Chief asked the Department for permission to hold a Council meeting to address this issue. As Holmes commented, “it shows how at this period of time the Department of Indian Affairs has a tremendous amount of influence over what a chief and council might do”; “it shows the degree of control that the Department has in band affairs.” Chief John Milliken, Sam Bressette, and Robert George wrote to the government in February 1927:

We have been anxiously waiting for the decision of the Indian Dept. regarding the sale of the parcel of land applied for by McKenzie Crawford & Son of Sarnia, Ont. Whatever conclusion the Dept. has come to please advise us if you are in favour of the sale of the land. Please give us permission for to hold a general council as soon as possible.

It is also apparent from the documents that First Nations people had very little understanding of their rights. Many did not know the processes involved in the surrender of reserve land: “there was very little education of the Indian population about what their rights were ... and while they were controlled and managed under very strict and specific legislation, there was very little understanding amongst the general population ... of what those things were.”

The following month, an Aboriginal man on the reserve wrote to the Department of Indian Affairs in Ottawa to find out whether the Indian Agent had the authority to call a general Council regarding the surrender of the land. Cornelius Shawanoo was concerned that the Department would compel the band



to sell the land even if the band voted against it. He was also worried that many First Nations people had lost their status, for example, by marrying white people. He also discussed the displacement and plight of the Potawatomis.

Mr. Shawanoo expressed great concern in this March 1927 letter that First Nations people would be paid a sum of money by developer Mr. Crawford to vote in favour of the surrender. In other words, persons on the reserves would be unduly influenced or bribed to support the resolution.

Members of the reserve who voted were in fact paid a “bonus” in cash. Mr. Crawford wrote the following letter to the local MP, Mr. Goodison, after the vote:

I think I forgot to tell you that all the Indians of the band over twenty-one that has a vote will get their bonus just the same as the ones that did vote.

We tried to buy it that day for \$100 per acre but they all said they had to have some money right away. So we agreed to pay them \$85 per acre and \$15. There was nothing under handed everything was [discussed] at the meeting.

The Chief issued a resolution in Council endorsing the surrender. The band sought a cash payment of \$85 for each of the eighty-three acres involved in the surrender of reserve land. The Department then drew up a voter’s list of the people on the reserves who were eligible to vote. Men were required to be twenty-one years or older. Women did not have the right to vote.

Of the thirty-nine individuals eligible to vote, twenty-seven voted in favour of the surrender. There were no votes against the surrender. As Holmes explained, people from this cultural background will often abstain from voting if they disagree with the proposal or the resolution:

They refused to take part in the vote ... people don’t want to say no. So, instead of saying no, the way you say no is to avoid something.

There was a protest against the surrender led primarily by Mr. Shawanoo. It was argued that the vote was obtained through bribery and fraud. A few days after the surrender, a lawyer’s letter was sent to the Superintendent General of the Department of Indian Affairs. The April 4, 1927, letter stated:

RE: KETTLE POINT RESERVE

We have been instructed by Messrs. Shawanoo and others on the Indian pay list of the Kettle Point Reserve, about certain alleged bribery and

fraud in connection with the meeting of the general Council held last week, to vote upon the question of the sale of a portion of the reserve to Mr. McKenzie Crawford of Sarnia, Ontario.

Kindly accept this letter as an application for a stay of the Department's sanction to the sale of any lots in the Kettle Point Reserve to the said purchaser.

We would appreciate the Department's ruling as to whether it will be necessary for us to resort to judicial remedies to stay the sale referred to, or whether the Department has exclusive jurisdiction in matters of this kind and has power itself to order an enquiry upon proper cause being shown.

The purchaser, Mr. Crawford, clearly anticipated there would be objections in the community to the surrender of the reserve land. On April 1, 1927, when Mr. Crawford wrote the letter to local MP Goodison describing the "bonus" to the "Indians," he said:

I am writing you this as I am sure some of the Indians are going to make as much trouble as they can.

The Department of Indian Affairs, after looking into this matter, concluded that the surrender vote was legitimate and that it satisfied the requirements in the *Indian Act*. There was a great deal of friction in the community, as several people believed the reserve land had not been lawfully taken. But despite these complaints and concerns, the Department of Indian Affairs proceeded with the surrender. On May 11, 1927, the surrender was approved by an Order-in-Council:

The Committee of the Privy Council have had before them a Report, dated 28<sup>th</sup> April, 1927, from the Superintendent General of Indian Affairs, submitting a surrender, given on the 30<sup>th</sup> day of March, 1927, by the Chippewas of Chenail Ecarte and St. Clair Band of Indians, residing on the Kettle Point Indian Reserve, No. 44, in the County of Lambton and Province of Ontario, of a portion of the above mentioned Indian Reserve, No. 44, containing an area of 83 acres ...

The said surrender has been given in order that the said portion of land may be sold for the benefit of the said band of Indians, in accordance with the terms thereof.



The Minister recommends, as the said surrender has been duly authorized, executed and attested in the manner required by the 49<sup>th</sup> Section of the Indian Act, that the same be accepted by Your Excellency in Council.

The Committee concur in the foregoing recommendation and submit the same for approval.

The amount agreed to in the surrender was \$7,055, which translates to \$85 for each of the eighty-three acres. The purchaser, Mr. Crawford, however, had difficulty raising this money. Mr. White, who was also interested in this reserve land, joined forces with Mr. Crawford to purchase the shoreline of the Kettle Point Reserve. The effect of the surrender was that the band lost its interest in that portion of the Kettle Point Reserve.

Many years later, the Chippewas of Kettle and Stony Point initiated a court action in relation to the surrender. In 1992, the matter was discussed with the Specific Claims Branch of Indian Affairs, whose role is to examine grievances of First Nations with the Crown regarding reserve land. They hoped to negotiate a settlement of the surrender, but this was rejected by the Specific Claims Branch who did not consider it within its mandate to enter into such negotiations.

The courts also considered the legitimacy of the 1927 surrender in the 1990s. At the Ontario Superior Court Trial Division,<sup>19</sup> at the Court of Appeal, and in 1998 at the Supreme Court of Canada,<sup>20</sup> the validity of the surrender was decided against the First Nation. It is important to note that Killeen J. of the Superior Court considered the cash payments and promises made to be “morally” repugnant: “There can be little doubt that these cash payments, and the promises which preceded them, have an odour of moral failure about them.”<sup>21</sup> The Court of Appeal agreed with Killeen J.’s conclusion.<sup>22</sup> The Supreme Court of Canada affirmed the decision of the Ontario Court of Appeal.

At the same time, the Indian Claims Commission also reviewed the legitimacy of the 1927 surrender. The Indian Claims Commission concluded that although the surrender was valid, Canada had breached its fiduciary obligation to the First Nation. It recommended that the government and the Band enter into negotiations. Canada has not responded to the Indian Claims Commission regarding this recommendation.

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19 (1995), 24 O.R. (3d) 654 (Gen. Div.).

20 *Chippewas of Kettle and Stony Point v. Canada (Attorney General)*, [1998] 1 S.C.R. 756.

21 (1995), 24 O.R. (3d) 654 (Gen. Div.) at 690.

22 (1996), 31 O.R. (3d) 97.

### 2.10.2 *The Surrender of the Shoreline at Stoney Point Reserve*

Mr. Scott, a real estate developer and Sarnia politician, approached the Department of Indian Affairs as he wished to buy the entire beachfront at Stoney Point Reserve. He needed a surrender of the land to the Crown in order to purchase this property. There were clearly several similarities between the Kettle Point surrender in 1927 and the Stoney Point surrender in 1928.

The same Indian Agent involved in the surrender at Kettle Point a year earlier is again favourably disposed to Mr. Scott's request for the same reason. In his view, the land is of little value to the Indians, "being white sand, and from an agricultural point of view ... absolutely worthless."

Again the local MP Goodison supported Mr. Scott's application. The Department had advised Mr. Goodison that given the difficulties encountered at Kettle Point the year before, a proper application should be made before negotiations were entered into with the Indians.

First Nations people were under extreme pressure from the Indian Agents to surrender the land on the reserves. Ms. Holmes explained:

... during this time period it was very, very difficult for any First Nation to successfully resist pressure to surrender their land and that's why you see all over Canada that there's barely — I think there's one reserve in Canada — that has never had a surrender of its reserve land.

It is important to note in the context of the surrenders that Indian bands were often "desperate for capital" as there were obstacles to borrowing money:

One of the things that you find frequently with surrenders is that the Band is desperate for capital for some kind of a project. Sometimes it's as simple as putting groceries on the table ... and they're desperate for capital because they, as an Indian Band, they can't borrow money or get money in the way that any other Canadian citizen can.

The Chief of Kettle and Stoney Point passed a resolution calling for Council to consider the application. The voter's list contained twenty-eight band members, twenty-five of whom voted for the surrender; therefore, the band accepted the surrender. Three hundred and seventy-seven acres were taken, which constituted 14 percent of the land at Stoney Point Reserve. It encompassed the entire beachfront of the Stoney Point Reserve. And the compensation was \$35 per acre, by contrast to the \$85 per acre received for the land surrendered at Kettle Point Reserve the year before. On August 7, 1929, the Order-in-Council was passed. The band received \$13,500 for the 377 acres on its shoreline.



In 1930, Cornelius Shawanoo asked the Department of Indian Affairs for copies of the 1927 Kettle Point and 1928 Stoney Point surrenders. As Ms. Holmes points out, “this is just another sort of a general indication or illustration of the way in which land matters were managed at that time period, and the level of information that Band members could or could not obtain, regarding their reserve land.” The Stoney Point surrender was also the subject of a land claim against the Canadian government in 1996.

## **2.11 Stoney Point Beachfront Purchased by the Ontario Government: Establishment of Ipperwash Provincial Park**

Beginning in 1932, local residents pressured the provincial government to create a public park at Stoney Point. A number of petitions were sent to the government. Local residents were displeased that much of the beachfront on Lake Huron belonged to private owners with cottages on this property. Local residents agitated for beachfront accessible to the public.

The Department of Lands and Forests of the provincial government inspected the lots fronting Lake Huron and Stoney Point. It concluded that one lot of approximately 109 acres was suitable for such public purposes. The province approached Mr. Scott and Mr. White, individuals who in 1928 bought 377 acres (four lots) after the land from the Stoney Point Reserve was surrendered.

In 1936, the Ontario government paid Mr. Scott and Mr. White \$10,000 for the one lot. This translated to almost \$100 an acre. It is noteworthy that when these men purchased the 377 acres in 1928, they paid \$35 an acre for the shoreline property at Stoney Point. The December 1936 Order-in-Council authorizing the purchase and the establishment of the public park, which was governed by the *Provincial Parks Act*,<sup>23</sup> stated:

The Committee of Council have had under consideration the Report of the Honourable the Minister of Lands and Forests wherein he states that,

Lot 8, Concession A. of the Township of Bosanquet in the County of Lambton, comprises 109 acres, more or less, and is part of the Stony Point Indian Reserve in the said Township according to registered plan No. 25 in the Registry Office for the County of Lambton. The Minister of Lands and Forests, acting on behalf of the Cabinet pursuant to many

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23 R.S.O. 1927, Chapter 82.

representations made by the public in that behalf, including a petition signed by over one thousand petitioners, inspected the said lot for the purpose of investigating the advisability of the Province acquiring the same by purchase for park purposes.

The physical characteristics of the lot are such that it lends itself admirably to park purposes. In the front of and located at about the centre of the said lot is a high beach forming what is known as Stony Point. This Point is composed of rock and the beach in front is covered with stones. To the East and West of the Point are located very fine sand beaches. The balance of the area is varied in character and for the most part it is of a sandy nature covered with small Red Pine.

The fact must be recognized that very few areas along the shores of the Great Lakes in the Province of Ontario can be utilized for the general advantage of the public. Decades ago, when townships were being laid out and efforts made to colonize, scant attention was paid to the future needs of the public from the viewpoint of summer outings, bathing beaches, etc. and these facilities can only be enjoyed and exercised by the public when it has free and uninterrupted access to and from the beaches ...

Having in mind the desirability of acquiring areas contiguous to the Great Lakes which might be held in perpetuity by the Crown for the beneficial use of the general public, The Minister is of the opinion that the Solicitor of the Department should be authorized to complete the conveyance of the said lands from the owners thereof, namely, — William J. Scott, Mary W. Scott, his wife, and John A. White and Lula May White, his wife, all of the City of Sarnia, to the Crown, the said lands, when acquired, to be vested in the Crown and held as a public park under the provisions of The Provincial Parks Act, R.S.O. 1927, Chapter 82.

Mr. Chester Walters, the Controller of Revenue of the Province of Ontario, has indicated that the purchase price of \$10,000.00 which the Vendors agree to accept in full satisfaction, is fair and equitable and my investigations tend to confirm this valuation ...

The Committee of Council concur in the recommendation of the Honourable the Minister of Lands and Forests and advise that the same be acted on.



Soon after the purchase, Ontario's Deputy Minister of Lands and Forests asked the Department of Indian Affairs for its assistance in ensuring that "neighbouring Indians" did not damage timber in the park. The Department undertook to take measures to protect the park property.

## **2.12 Kettle and Stony Point Band Seek Protection of the Burial Site in the Provincial Park**

In 1937, a year after Ipperwash Provincial Park was created, the Chief and Council of the Kettle and Stony Point Band notified authorities of the existence of a burial ground in the park. The Band asked that this site be protected.

The following resolution passed by the Kettle and Stony Point Band asked the Department of Indian Affairs on August 12, 1937,

... to request the provincial Govt to preserve the old Indian burial grounds on the Government park at Ipperwash Beach and have their Engineer mark out and fence off the grounds so that they will be protected ...

The following day, the Indian Agent wrote to the Department of Indian Affairs in Ottawa with a recommendation that this resolution be approved. He suggested the federal department ask the Ontario government to preserve the old Indian burial ground at the new Ipperwash Provincial Park. It was necessary for the Department of Indian Affairs to approve the Band's resolutions in order for them to be acted upon. As Ms. Holmes observed:

... in fact the Chief and Council had a very limited range of items that they could make decisions on ... they always had to go to the Indian Department for approval.

A few days later, the Secretary of the Indian Affairs Branch, T.R.L. MacInnes, wrote to the Ontario Deputy Minister of the Department of Lands and Forests, Mr. Cain. This provincial department had jurisdiction over the parks. He discussed the concern of the Indians at Kettle and Stony Point Band regarding the preservation of the Indian cemetery. He asked the Deputy Minister to comply with the wishes of the Indians and protect the site. The federal official writes:

In connection with the work at present being carried out under the direction of your Department at Ipperwash Beach, near Sarnia, I have to inform you that the Indians of the Kettle and Stony Point Band are

much concerned in the preservation of the old Indian cemetery which, I understand, is located within the territory now being developed as a park.

On the 13<sup>th</sup> of this month the Council of the Kettle and Stony Point Bands [sic] passed a resolution requesting this Department to bring the matter to your attention with a view to having this old Indian burial ground preserved intact and properly fenced. The request will, I am sure, appear to you as entirely reasonable and I should be glad if you would see that the necessary action is taken with a view to meeting the wishes of these Indians.

I should be glad to have a favourable reply at your earliest convenience in order that the Indians may be so advised.

The Provincial Deputy Minister responded:

Re: Indian Burying Ground, Ipperwash

Not having before me all the facts in connection with the location of this area in relation to our program of works now being carried out, I cannot speak definitely on the matter, except to the effect that I shall do my best to make sure arrangements as will respect the natural wishes of the Indians.

Despite these intentions, it appears that no action was taken by the Ontario government to preserve or protect the burial sites.

In 1950, human remains were found in Ipperwash Provincial Park. The wife of a Park Superintendent took photographs of the burial site.

The provincial government conducted an archaeological survey in 1972. It did not reveal evidence of a burial ground in the Ipperwash Provincial Park. However, Mr. Hamalainen reported in his 1972 investigation that the land had been disturbed. Ms. Holmes explains:

... at the beginning of his report, he prefaces all of his work on the fact that the park had been disturbed, and any archaeologist will tell you that if an area is disturbed, you don't expect to find a lot of archaeological material ...

... when you read his report, you have to be very careful to understand what he's saying about the limitations of the area that he examined, and the limitations of the methodology that he used to examine the park.



Dr. Spence of the University of Western Ontario Department of Anthropology subsequently conducted a study of the burial site from the 1950 photographs. In his 1996 report “The Ipperwash Burial,” Dr. Spence concluded that the skeleton belonged to an Ojibwa child of about eleven years old buried in the 1800s or the early 1900s. His assessment was based on the burial position, the conditions of the bones, and the absence of a coffin.

Dr. Spence was uncertain whether this was a “lone burial” or whether other people were buried in this area. It is “possible,” he says, that the Ipperwash burial was once part of a larger Ojibwa cemetery in the area. Letters between government officials and Ojibwa leaders suggest that there had been an Ojibwa cemetery in the park. In his report, Dr. Spence wrote “rumour has it that a large number of bones were found when the reservoir was built in 1942, and the Ipperwash child was buried quite near the reservoir.”

An archaeologist from the Canadian Museum of Civilization reviewed the Spence Report and the photographs. Dr. J.S. Cybulski supported Dr. Spence’s conclusion regarding the probable ethnicity and age of the deceased child.

It is noteworthy that in his survey in the 1820s, Mahlon Burwell found a burial site in sand close to the shore of Lake Huron and east of the Aux Sable River outside of the Stoney Point Reserve. Ms. Holmes said, “That would suggest to me that a burial inside of what became the provincial park would be consistent with other findings in the area.”

In her review of the documentary material, there were no records to suggest that any steps were taken by the Ontario government before the 1990s to protect in any way the Aboriginal burial grounds described in the Kettle and Stony Point Band’s request of 1937.

### **2.13 The Appropriation of Stoney Point Reserve**

During World War II, the Department of National Defence decided it wanted to establish an army training camp on the site of the Stoney Point Reserve. It began to seriously consider this location for military purposes in February 1942. One of the reasons it targeted this location was that the land was undeveloped.

The Department contacted the Indian Agent, George Down. Officials learned that approximately fourteen families lived on the Stoney Point Reserve and that these people belonged to the same band as residents on the Kettle Point Reserve. Military officials wished to know the procedures necessary to acquire the Stoney Point Reserve. Mr. Down explained it was necessary to call a general band meeting to outline the military’s proposition to the Indians, after which band members

would vote on whether they endorsed the proposal. The outcome of the vote would be submitted to the Indian Affairs Branch. If favourably received, negotiations with Stoney Point residents would begin.

In a letter to the Secretary of the Indian Affairs Branch, Mr. Down states that the military wished “to proceed with this scheme as soon as possible.” Mr. Down himself was supportive of the idea for two main reasons: (1) it would centralize the Stoney Point and Kettle Point Indians in one location; and (2) geographically, the reserve was an ideal site for the army camp. In the letter, the Indian Agent writes:

... This site appears to be ideally situated and the contours of the land lend themselves to hutment barracks and manoeuvring grounds, with the open lake as a background for rifle ranges ...

Personally, I think this is a wonderful opportunity to gather a few straggling Indians and locate them permanently with the main body of the Band at Kettle Point. It would solve many problems and dispense with a great deal of expense from both Band Funds and Departmental Appropriations such as schools, roads, visitations, etc. ...

The Secretary of the Indian Affairs Branch responds that the land could be taken by the government pursuant to the *War Measures Act*.

It was clear that by February 21, 1942, the Department of National Defence was anxious to proceed as quickly as possible. It described the matter as “one of some urgency.” The military began an appraisal process to assess the value of the land and buildings on the Stoney Point Reserve.

The appraisal was completed in a very short period. And it is clear from the February 28, 1942, Appraisal Report that the valuation was not made according to standard appraisal practices. The buildings on the reserve were not measured; they were assessed at \$8,000. Also the land was appraised at \$15 per acre, based on the price for which a band member would sell such property to another band member. As Holmes points out, the appraiser failed to distinguish between the sale of land to a fellow band member and the sale of property to a third party:

... what that does not take into account is the fact that when one band member is selling property to another band member, the property does not leave — it’s not alienated from the band. So, that property remains within the control of the First Nation. And only those First Nation members are legally allowed to reside on it.



So, he's using that price as a price for the land when the land is going to be completely alienated from the First Nations. So this is perhaps a lack of understanding on the part of the appraiser for the difference between exchanging land within a First Nation and completely alienating land from a First Nation.

The government appraiser failed to take into account the fair market value of the property, such as the price neighbouring properties would sell for on the open market. The government estimated the expenses that would be incurred to move the people on Stoney Point to Kettle Point was \$3,400.

The following month Indian Affairs gave instructions to the Indian Agent regarding the sale of the Stoney Point Reserve. In a letter on March 24, 1942, it enclosed:

1. Surrender documents and voter lists.
2. The Appraisal Report.
3. The Department record of location tickets on the Kettle Point Reserve.
4. Suggestions in presenting the proposal to the Indians.

The Indian Agent is also instructed to remove “white owners” from the Kettle Point Reserve to make room for the Stoney Point families that would be shortly relocating to Kettle Point. The Indian Affairs Department uses the term “white” for people not recognized as registered Indians under the *Indian Act*. It does not necessarily mean that these people were not Aboriginal. It could include women who had lost their status because they had married non-Indians. Or it could include people of mixed blood who were not Indians within the meaning of the *Indian Act* because their father was white and their mother was a registered Indian. The March 1942 correspondence states:

... With respect to the list of white owners, this would appear to us to be a golden opportunity not only for us to get rid of these white trespassers but to give the said white trespassers an opportunity to sell their interest on the reserve to bona fide band members and get a fair price.

In the judgment of this office considerable pressure should be put on these whites at this time to get them off the reserve, and the room they are taking should provide for at least some of the fourteen families that have to be moved onto Kettle from Stoney.

It is also evident from this letter that the Indian Agent is pressured to arrange a surrender vote as quickly as possible “within a week or ten days.” There is a sense of urgency. The Indian Agent was encouraged to arrange transportation “to Kettle and Stoney Indians working away from the reserve” if, by doing so, he would “insure a favourable vote.”

Once the band voted, the Department of Indian Affairs indicated it would “make immediate plans to get the people off Stoney Point.” The Indian Agent is also told:

If there are any houses that can be moved to Kettle[,] steps should be taken immediately to find a piece of land to put them on and get the movement under way.

As Ms. Holmes commented in her evidence at the Inquiry, the government is making these statements and organizing the removal of Stoney Point people before the surrender vote, before people on the reserve have decided whether they will be dislocated and lose their property:

... [w]hen you ... look at the Agent’s instructions, the instructions that he’s given suggest that the Department is already viewing the surrender as a done deal. (emphasis added)

There were protests from the Aboriginal people. In a March 1942 document, the “Chippewa Nation of Indians” make it clear they do not want to surrender or leave the land at Stoney Point Reserve. They referred to the vow of King George<sup>24</sup> regarding the land: “expressly reserving to the said Nation of Indians and their Posterity at all times here after for their own exclusive use and enjoyment.” They state in unequivocal terms they want to retain their reserve:

... So please accept this as our final answer of not wishing to sell or lease the Stoney Point Reservation.

There were further protests from these First Nations people. Members of the Kettle Point and Stoney Point War Workers Organization issued a petition on March 25, 1942, which contained forty-four signatures. The petition describes the allegiance of their ancestors to the British particularly in the War of 1812, and their allegiance to Canada and allied countries including the United Kingdom in World

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24 Royal Proclamation issued by King George III.



War II. They describe the ways in which they have assisted in the war against the Nazis, including enlisting in the Canadian Army.

The petition discusses the lack of respect in the failure of the government to consult with the Stoney Point residents. They clearly state:

... it is our desire to have the Department of Indian Affairs call off this General Council and cancel the surrender of this reserve.

*... it is not our desire to sell this reservation or lease it so please take this as final.* (emphasis added)

Their plea to abstain from selling the Stoney Point Reserve is evident in this petition:

We the undersigned members of the Kettle & Stoney Point war workers organization, in trying to help to defend our country and the allied countries of the United Kingdom from the enemy have been labouring and striving to raise money for the soldiers who are in the army doing all we can to help win this war in the hope of having freedom in our country. We are all working for this one great cause even the children that pick up the odd nickel use it for our defence.

We are also in the hope of giving protection to the smaller nations who are under the cruel laws of the Nazis. We are working for our protection and for the same reason our boys enlisted in the army in that they may help protect their homes and country.

We understand that Stoney Point reservation is being taken over by the military Department without consulting the members and owners of the reserve. What will the boys think who have signed up for active service when they hear that their homes have sold and their lands and find no home and land to fall back on when they return home after the war.

As for us who are at home doing all we can to help win this war could not endure to see our children and relatives taken away from their homes and which our ancestors worked hard to build for them ... which also have been their homes for many years.

Many of us who are members and owners of this reserve are the descendants of those who fought to protect this same country in the year of 1812.

Mr. George Down the ex Indian agent for this reserve also Mr. McCracken the present Indian agent have posted notices at the council house and even at the doors of the both churches, of which no doubt your are aware is not lawful. The people goes to those churches for the purpose they are there for and that is to worship God and not to have their minds occupied on the surrender of their beloved homes and lands.

And it is our desire to have the Department of Indian Affairs call off this General Council and cancel the surrender of this reserve.

Drillers have brought in their machinery and started drilling operations without consulting anyone on the reservation. The Indian agent was notified and he said it was nothing at all. He would not do anything about it ...

We are not against this war. We heart and soul in the work of hoping this war be soon but we hope and desire to hold this reservation which our forefathers fought for and for which our boys are fighting in present war being the second time this reservation is fought for.

Despite the protest, the Indian Agent as instructed called a surrender vote on April 1, 1942. The Indian Agent was clearly aware of the opposition to the surrender.

At the beginning of the meeting, the Chief and Council announced that they opposed the surrender. There were eighty-three eligible voters, seventy-two of whom attended the meeting. Fifty-nine voted against the surrender. First Nations people were clearly not interested in either selling or leasing the Stoney Point Reserve.

Despite the decisive vote by First Nations people, the government pursued its plans to take over the Stoney Point Reserve. The Department of National Defence sought an order from the Privy Council to appropriate the reserve. Two weeks after the surrender vote, Privy Council Order 2913 authorized the appropriation pursuant to the *War Measures Act*. The April 14, 1942, Order-in-Council stipulated that the Department of National Defence required the 2,240-acre Stoney Point Reserve as an advanced military training centre. It stated that negotiations were entered into between the Real Estate Advisor of the Department of National Defence and the Indian Affairs Branch on behalf of the Indian Band. The sum of \$50,000 was considered “fair and reasonable compensation.” This sum included the cost of moving the Indian families — “their buildings, chattels” — off the reserve.



It is acknowledged in the Order-in-Council that the Indian Band voted against the government proposal: “it does not appear likely that the acquisition of the property in question can be effected by way of negotiation.” The Order-in-Council further states it is necessary to acquire that particular site for military purposes and that the *War Measures Act* is invoked:

That, as the establishment of an advanced training centre in the locality in question is a matter of military expediency and as the site in question is the only one suitable for that purpose, it is in the public interest and for the efficient prosecution of the war desirable that the lands in question be acquired and to enable this to be done it is necessary that the provisions of the War Measures Act be invoked ...

It is explicitly stated that if the Department of National Defence does not require the reserve property after the war, negotiations will be entered into to return the land to the Indians at a fair price:

... together with the further condition that, if, subsequent to the termination of the war, the property was not required by the Department of National Defence, negotiations would then be entered into to transfer the same back to the Indians at a reasonable price to be determined by mutual agreement.

The decision to displace First Nations people and move them from the Stoney Point Reserve to the Kettle Point Reserve met with continued opposition. A lawyer was retained to dispute the acquisition of the reserve. Letters were sent to the Department of Indian Affairs soon after the invocation of the *War Measures Act*, but it was clear that the government had no intention of halting its plan to set up a military camp at the Stoney Point Reserve. In a letter to the Indian Affairs Department on April 24, 1942, Mrs. Beattie Greenbird, an elderly Stoney Point resident, discusses the treaties and undertakings made by the British and Canadian governments. She asserts that the reserve was promised to the Band for posterity. Mrs. Greenbird refers to the Treaty of 1827 and to the 1873 Council resolution adopting the Potawatomis. She also complained that the Band’s young men were fighting in the war while the government was in the process of selling their land. Her letter states:

... The animal has laws to protect them not to be disturbed or molested on the ground. Us Indians has no law we are classed way down below animal ...

We don't side up Hitler and his heartless aids all we [would] like to keep Stoney Point for our descendent[s]. There is a lot of land four or five miles east from Stoney Point ...

P.S. As the Reserve is sold already I suppose we have a very poor chance to cut some timber for building purposes and fence post[s] as we were told that we can cut timber any time even if the Reservation is sold. We need 506 hundred fence post[s] at Kettle Point. We were just starting to cut them when the blow hit us.

I'm the oldest and have rights to say something about our poor children's inheritance.

In his reply to Mrs. Greenbird, the Superintendent General of Indian Affairs minimized the legal obligations to the Indians at Stoney Point under the Treaty. He took the position that people at Stoney Point had been treated "fairly and generously" for more than 100 years. One of the rationales used by the Department to appropriate the reserve is that its residents did not cultivate their land. As Holmes commented, "this is a very common attitude expressed in the Department of Indian Affairs, that if lands were not cultivated as farms, that they were unproductive, that ... the Department saw very little value in any other use of the land." An excerpt of the federal government's reply to Mrs. Greenbird follows:

The Indian people at Stony Point are Canadians and loyal subjects of His Majesty. As such, and in accordance with their rights as Canadian citizens, and quite regardless of any so-called treaty obligations, you have been treated fairly and generously for upwards of one hundred years ...

I am sure the Chippewas of Stony Point and Kettle Point are no exception. Two thousand acres of your land, the greater part of which you have chosen to leave unproductive, was ideal for the purpose and urgently required for the accommodation of thousands of troops whose training in arms is urgently and desperately needed for the defence of our shores. As Superintendent General of Indian Affairs I have seen to it that you will be adequately compensated. As Superintendent General of Indian Affairs I will see to it, as will I assure you my successors in office, that your band and your returning sons will be fairly treated in the period of readjustment which must inevitably follow the successful issue of the struggle in which Canada is engaged.



A lawyer on behalf of the Band wrote letters to the Minister of National Defence, the Prime Minister, and the Governor General. The appropriation was described as a violation of the treaty rights of the Band. Yet the government refused to change its position.

The government proceeded with the appropriation. The maximum compensation of \$50,000 was to be apportioned as follows:

Land Value:	\$33,600.00
Appraisal of Buildings:	\$ 8,000.00
Moving Costs and Compensation for Dispossession (as required not to exceed):	<u>\$ 8,400.00</u>
<b>TOTAL:</b>	<b>\$50,000.00</b>

There was no compensation to “white tenants” and to owners of unimproved lands. Nor was compensation made to the Band for its interest in the reserve. There were sixteen families at Stoney Point deemed by the government as eligible for moving expenses.

Stoney Point residents were relocated to small lots on the Kettle Point Reserve. Some of their homes were transported to Kettle Point. Prior to the relocation, they had lots of approximately forty acres. But after the appropriation, many were placed at Kettle Point on lots of only two to three acres.

The impact of the appropriation on the Band was significant. The acreage had been reduced from 5,096 acres at the time of the Treaty to just over 2,000 acres. Moreover, the population had greatly increased. According to census data, the population of Stoney Point and Kettle Point in 1839 was under fifty, but by 1944, there were three hundred and seventy-one people on the reserve. Holmes testified:

... the population has grown exponentially and the amount of land is less than half the land. So it just helps you to understand ... the impact of completely losing one of their reserves and trying to put all those people, all that population, in one location.

Helen Roos in her master’s thesis “It Happened as if Overnight: The Expropriation and Relocation of Stoney Point Reserve #43, 1942” also discusses the serious ramifications of the appropriation:<sup>25</sup>

25 Helen Roos, “It Happened as if Overnight: The Expropriation and Relocation of Stoney Point Reserve #43, 1942”, M.A. Thesis, University of Western Ontario, May 1998, in Holmes Report.

The change from forty acre parcels to two acres severely impeded farming efforts, particularly on the swampland on the 14th Concession. Removal onto new land in the midst of the growing season prevented the families from growing needed winter food. In addition, the distance from the established clientele for the craft industry, and from local farmers who were employers, reduced the opportunity to make money. Within the first year of removal, many families were forced onto welfare or off-Reserve in order to survive.

Another consequence of the 1942 government decision was the friction it caused between the former Stoney Point and the Kettle Point residents. As previously mentioned, the acreage on which these First Nations people were compelled to live was greatly diminished. Residents from Kettle Point were not anxious to have the Stoney Point people share their limited reserve property. These problems were evident to the Indian Agent who wrote this letter to the Secretary of the Department of Indian Affairs in June 1942:

The Indians of Stony and Kettle deeply resent the fact that their Reserve has been taken from them. It appears as though the Kettle Point Indians are not eager to have the Stony Indians take up residence at Kettle. Some of the Stony Indians visiting Kettle recently in search of locations are called “refugees” by the Kettle Point Indians. The Band still have hopes that a lawyer whom they have consulted in Toronto will be able to prevent the use of their Reserve for military purposes. Delegations reportedly financed by private subscriptions and headed by one “Beattie Greenbird” have visited the lawyer on at least two occasions. Generally speaking, however, the Indians of both Kettle and Stony are, at least outwardly, resigned to the fact that their Reserve is gone as far as they are concerned.

As Ms. Holmes emphasized, the divisions caused by the 1942 forced relocation continue to permeate the Kettle and Stony Point Band. Members of the Kettle and Stony Point Band in the Part I hearings describe the significant impact of the 1942 appropriation on their lives and on the lives of their parents and other relatives.

The expert witness concludes from her review of the historical documents that the Department of Indian Affairs did not adequately fulfill its role as “trustee of the Indian people” in the government’s decision to appropriate the Stoney Point Reserve:



... the mandate of the Department of Indian Affairs was to be the trustee of the Indian people ...

And I think that they could have done a better job at getting them a better deal ...

As Holmes said, “it was extremely distressing for the people that had to move; they felt very dislocated.” In her view, the Department of Indian Affairs welcomed the opportunity to consolidate the two communities into one geographical area. And it also wanted to co-operate with the Department of National Defence:

... When I look at the documents that I dealt with in my report, it's clear from the documents around the time of the land being expropriated that people were extremely distressed at being displaced.

The things that they talk about are *their attachment to the land, their sense of history, the importance that as Elders, we heard in some of the petitions ... the responsibility to look after that land, to guard that land. That it was their sacred heritage.*

In the defence of the military, *local Indian agents and senior officials in Indian Affairs fail to scrutinize the details of the report and purchase price. Throughout the early period, Indian Affairs disregarded both the letter of the procedural requirements, as well as the spirit of their profession. Clearly the military and Indian Affairs seriously betrayed the residents of Stony Point.* The community was excluded from the process, when the military withheld plans to purchase the land or establish their camp. In addition, Brigadier General Macdonald left the band out of any negotiations regarding the sale or purchase price. However, the brunt of historical judgment rests with Indian Affairs, and the mismanagement of the Stony Point surrender and sale.

While the Indian Agent strongly supported the sale [at] the outset, his motivations were not based on the war effort. Rather, Indian Affairs saw an easy opportunity to dispose of an administrative and financial burden.<sup>26</sup> (emphasis added)

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26 Helen Roos, M.A. Thesis, p. 161, quoted during Joan Holmes' testimony.

In Ms. Holmes' view, the human cost to the First Nation people, in forcing them to relinquish those lands, was not weighed as heavily in the balance as the political and financial inconvenience to the federal government of acquiring other lands.

In 1944, the Department of National Defence acquired the remainder of the Stoney Point waterfront lots from private owners Messrs. White, Scott, and Wright. The Department claimed that the reason for this appropriation was because land acquired for Camp Ipperwash did not provide sufficient depth to safely accommodate the necessary firing ranges.

## **2.14 Desecration of the Burial Site at Stoney Point Reserve**

After they returned from the war, Aboriginal soldiers from the Stoney Point Reserve were deeply upset and alarmed at the damage to the Stoney Point cemetery at Camp Ipperwash. They were also devastated to learn that the federal government, on the initiative of the Department of National Defence, had appropriated the Stoney Point Reserve. They were deeply upset that their community at Stoney Point had vanished. As Professor Johnston explained:

The trauma of loss of ancestral lands can, at least in part, be attributed to the enforced separation from the graves of one's ancestors. This loss cannot be fully understood without an appreciation of the relationship between the Living and the Dead among the Anishnaabeg.

And she further said:

I understand the attachment of Aboriginal people, Anishnaabeg people, to lands as also being part and parcel of an attachment of the Living to the Dead ... [a]nd that proximity to the graves of one's ancestors, in fact, is one of the most powerful forces in the world view of Anishnaabeg people.

Both the Department of National Health and Welfare and the Indian Affairs Branch pressured the Department of National Defence after the war to take measures to protect the cemetery. In a letter in October 1947, the Department of National Health and Welfare discusses the removal of tombstones and the presence of gunshots in the remaining few tombstones. The poor maintenance of the cemetery area is described as well as the deep concern of Stoney Point residents for the "vandalism and disrespect" of their sacred site. Responsibility of the



federal government to the Indian people, whose military activities were likely responsible for some of the damage, was stressed. Department of National Health and Welfare representatives who were shown the cemetery by Robert George described their observations and urged attention to this issue of great importance to First Nations people:

... An Indian, Robert George, presently of Kettle Point who, I believe, previous to the war lived at Stony Point and with the transfer of the reserve area to the Department of National Defence was moved with the other Indians to his present abode. *Mr. George was greatly concerned about the state of the Indian cemetery at the former Stony Point Reserve. He told us that when the Indians were moved from the reserve that the National Defence Department promised not to have any damage created to the Indian cemetery.* At that time, or shortly after, the cemetery ground was fenced and the tombstones were left in good repair.

*He took us to the cemetery and showed us that only two tombstones were remaining on the grounds and that these were marked with shell shots. I noted one red granite marker had two distinct marks of being hit a glancing shot by a high caliber rifle bullet. A second stone, white marble, was broken and a considerable distance displaced from its grave position. Mr. George pointed out that a great number other tombstones had been moved. He also pointed out that the fence when they had left the property was in good repair and now that the front of it was torn down. The gate is of wood construction and has suffered considerably due to the elements of weather and some amount of damage has been created by other forces.*

*It would appear that the Stony Point Indians are greatly concerned about the vandalism and disrespect shown to the resting place of their ancestors and in this instance are very anxious to have some restitution made by the Department of National Defence. The burial ground has not been kept trimmed and bushes, poison ivy vine and wild hay overrun the entire area. I do not believe that there was any particular instance of desecration. However, certainly some individual or parties have disturbed the previous arrangement of tombstones and may have caused the collapse of the front fence. I am not prepared to say it is the fault of the Department of National Defence though it is quite likely they may have some responsibility inasmuch as their basic*

*training camp was nearby and their rifle range adjoined the cemetery. (emphasis added)*

Similar sentiments are conveyed a few months later by the Indian Agent to his superiors in Ottawa at the Department of Indian Affairs; the unfulfilled promise made by the military to protect the burial grounds at Camp Ipperwash. Mr. McCracken writes in December 1947:

*... At the time of the expropriation I recall that the military definitely promised to respect the cemetery at all times and everyone assumed that the military would protect the burial grounds by erecting a strong fence or some similar device. This was not done. (emphasis added)*

As Holmes stressed, “[t]he lack of protection and respect for burial grounds was deeply offensive and became symbolic of their loss of ancestral territory and their inability to maintain significant connections to their cultural heritage.”

## **2.15 Attempts at the Return of the Stoney Point Reserve**

It was the expectation of former residents of the Stoney Point Reserve that the federal government would return the land at Camp Ipperwash shortly after the war. The Order-in-Council signed in 1942 specifically stated that

... if, subsequent to the termination of the war, the property was not required by the Department of National Defence, negotiations would then be entered into to transfer the same back to the Indians at a reasonable price to be determined by mutual agreement.

Returning First Nation soldiers from Stoney Point were “shocked to see their community destroyed.” As discussed, they were devastated to learn that the reserve land had been expropriated by the Canadian government, that their community no longer existed, and that the Stoney Point cemetery had been desecrated.

After World War II, the Department of National Defence (DND) seemed prepared to return the Stoney Point Reserve and lease back areas still required by the government for military purposes. In a May 1946 letter the Deputy Minister of DND responds to the request of the Department of Mines and Resources, of which the Indian Affairs Branch is part, to enter into negotiations with the Indians for the return of the Stoney Point Reserve. Although DND acknowledges it may be unjust and a violation of the treaty rights for the government to retain



ownership of the land, it wants to continue to use it for military training purposes. The Deputy Minister of DND writes:

Confirming conversation your Mr. W.S. Arneil and Brigadier G. Kitching of this Department, 14 Feb 47, it is agreed that the following action will be taken in respect of the above Camp.

- a. All of the land owned by the Department of National Defence, shown on Plan No. 64-1-13 attached hereto, less that portion hachured in yellow, is to be returned to the Department of Mines and Resources.
- b. Buildings outlined in Purple to be reported surplus on request from your Department for re-allocation by Crown Assets Allocation Committee.
- c. Department of National Defence to be given a lease on the property to be transferred for a period of 99 years for a rental of \$1.00 per annum.
- d. Department of Mines and Resources, Indian Affairs Branch, to be permitted to authorize the local Indian Tribe to carry on cultivation of the land in all areas except those outlined in Red and Blue. It is understood that the Department of National Defence is prepared to make good any losses sustained through damage to crops as a result of the carrying out of Military exercises in the area.
- e. The area outlined in Blue is a safety zone in connection with the Rifle Range, and the Department of National Defence must be empowered to clear the area of all persons, animals or equipment during periods of firing practice.

The Judge Advocate General's Branch of this Department has been requested to draw up a draft form of Agreement which will be submitted to you for your approval within the next few days.

No agreement was reached between the Indian Affairs Branch on behalf of the First Nation people and the federal government. By May 1948, "the military completely backed away from negotiations, and decided that they wanted to keep the entire camp ... as a cadet training camp." In the 1960s, there was again an attempt to negotiate the return of the Stoney Point Reserve. However, DND did not vacillate from its previous position that it needed the camp for military training. The Department made it clear the land would not be returned in the foreseeable future.

In the early 1970s, Jean Chrétien, then the Minister of Indian Affairs, made a concerted effort to push DND to return the Stoney Point Reserve to the Aboriginal people. In January 1972, Donald Macdonald, Minister of National Defence, told Mr. Chrétien that “after consultation with departmental officials and with the Members of Parliament of the area, I feel that the Department must retain the property at Ipperwash.” In April 1972 correspondence to Mr. Edgar Benson, Minister of National Defence at the time, Mr. Chrétien explains the history of the Stoney Point Reserve including the Huron Tract Treaty of 1827, the 1942 acquisition by the federal government of the land under the *War Measures Act*, and the attempts by the Department of Indian Affairs and the Band since 1946 to have the land returned. He argues that “the Indian people involved have a legitimate grievance.” Mr. Chrétien also argues that the return of the land is necessary as a means of improving the Band’s “social and economic position.” He urges the federal government to take immediate action as the patience of the Band was waning. Also, there was concern that the government could receive adverse publicity for its lack of attention to this matter. A portion of Mr. Chrétien’s April 17, 1972, letter reads:

The traditional stance of your Department has been that, only when these lands are no longer required for training purposes, will it be ready to negotiate the return of the lands to the Band. The letter to me from your predecessor, the Honourable Donald S. Macdonald, dated January 28, 1972, reaffirms this stand. But he also indicated that the major factor standing in the way of returning the lands taken in 1942 is the problem of clearing them of unexploded munitions. Based on a study by your officers and those of Justice, it seems that the cost of clearing the total Camp area of 2,477 acres, which includes the 2,211 acres appropriated in 1942, is estimated to be anything from 18 to 30 million dollars ...

I had hoped that a possible compromise might be the return of parcels of land to the Indian people, which they could develop to provide income for their Band without seriously impairing the training capacity of Camp Ipperwash. Some of the beach property, and the 350-yard strip near Highway 31 are examples. But this again raises the problem of clearing such parcels of unexploded munitions.

An alternative would be to purchase an equivalent amount of land in the area, for the use of the Kettle Point Band, but the question of who would pay the cost has not been explored.



*It seems to me that the Indian people involved have a legitimate grievance. They did not agree to surrender the land in the first place, but it was appropriated in the national interest prevailing in 1942. It is now 1972, and they have not got it back. Yet they desperately need it to improve the Band's social and economic position. In addition, there is their deeply rooted reverence for land and their tribal attachment to it. Stony Point Indian Reserve No. 43, now Canadian Forces Base Camp Ipperwash, was established in 1837 for the Chippewas of Kettle and Stony Points [sic]. It was one of three areas reserved by the Chippewa Nation of Indians when they surrendered a tract of land in the Western and London Districts of Upper Canada, on July 20, 1637 [sic; 1827], containing some 2,200,000 acres.*

*They have waited patiently for action. There are signs, however, that they will soon run out of patience. There is bound to be adverse publicity about our seeming apathy and reluctance to make a just settlement. They may well resort to the same tactics as those employed by the St. Regis Indians at Loon and Stanley Islands in 1970 — to occupy the lands they consider to be theirs. And as you know, Mr. George Manuel, President of the National Indian Brotherhood, is interceding on their behalf — he wrote to you on March 14 and sent me a copy.*

Even though I can foresee these difficulties as quite likely to occur, my main concern is to see that a just settlement is secured for the Kettle Point Band. I wish that we could meet to discuss possible solutions. (emphasis added)

Contrary to Mr. Chrétien's expectations, the Department of National Defence did not seem interested in resolving this issue.

In what appears to be an exasperated letter to the Minister of Defence in December 1972, Mr. Chrétien discusses the moral responsibility of the federal government to these Aboriginal people. He states that for twenty-six years attempts had been made by the Department of Indian Affairs to address this issue with DND, which had not met with any success:

*I feel very deeply that somehow we must find a solution to this problem. If the Kettle Point Indians are not to have the Camp Ipperwash lands returned to them, then it seems to me there is a moral responsibility on the Government's part to acquire an equivalent amount of land and sell it to them "at a price to be mutually agreed upon."*

*I would be grateful if you would study this whole matter personally, and then perhaps we could meet to discuss possible solutions. (emphasis added)*

After the failed attempts in 1972, the Band decided to become more directly involved in the negotiations. In 1973, the National Indian Brotherhood, a national association of Chiefs, together with the Band, began to negotiate with the Department of National Defence. The Department of Indian Affairs, encouraged by these negotiations, advanced \$66,000 to the Chippewas of Kettle and Stony Point to enable them to purchase land next to the reserve. This money was an advance against the compensation the Indian Affairs Department believed the Band would receive from its negotiations. However, it was not until 1980 that a proposal was put forth.

The 1980 proposal, voted on in 1981 by the Kettle and Stony Point Band, contained these provisions:

1. All of Camp Ipperwash is included and not just that part taken from us in 1942.
2. We will receive approximately \$2,490,000.00 representing additional compensation, interest and expenses.
3. Mines, minerals and timber rights will be transferred to Indian Affairs now for our benefit.
4. When not required by Defence parts or all of the Camp will be returned to us at no cost.
5. No part of the Camp can be sold without Indian Affairs approval.
6. At regular intervals Defence will reconsider its needs to continue its use of all or any part of the Camp.
7. We will have a designated contact with Defence to see if jobs are available for Band members.
8. This proposal deals only with the Band's interest: The vote to be held is not a surrender vote: Locatee claims for those who were moved are not being affected.

The land included not only the former Stoney Point Reserve that was appropriated in 1942, but also the beachfront property that had been purchased by the government in 1928. Eighty percent of the Band voted in favour of the proposal. An amount of \$2,490,000 was proposed. An evaluation report prepared at the time the National Indian Brotherhood was negotiating with the government in



1974 concluded that the 1942 compensation to the Band for the Stoney Point Reserve was well below market value.

The federal government passed an Order-in-Council in 1981 approving the agreement. The agreement was not in fact signed until 1985. It is noteworthy that the agreement stipulated that “[t]he Burial Yard is, and will remain, out of bounds to any and all military personnel.”

Yet again the land is not returned. The agreement did not specify a date for the return of the reserve. Rather, it states that DND will assess its position every four years:

The Department of National Defence shall assess its relative needs at least every four years regarding the continued use and maintenance of its facility in such location.

Friction between the Kettle Point community and the former Stoney Point residents and their descendants deepened. In the 1980s, former Stoney Point residents and their descendants established the Stoney Point Steering Committee, which later became the Stoney Point Community Association. Their two objectives were: (1) to educate the Kettle Point community and the public at large that the Stoney Point group had different interests and were in fact separate from the Kettle Point community; and (2) to lobby Indian Affairs and the other federal departments to ensure that they were “recognized as the legal heirs and negotiating body in any return of Camp Ipperwash.”

No action appears to have been initiated by the federal government in the late 1980s regarding the return of Camp Ipperwash. In 1990, the Stoney Point group was granted permission by the Department of National Defence to bury one of its people, Dan George, at the Stoney Point cemetery. This raised the hopes of the Aboriginal people that the federal government would soon return the land. The Parliament’s Standing Committee on Aboriginal Affairs also supported the Stoney Point group: “The government [must] rectify a serious injustice done to the Stoney Point First Nation ... by returning the land at Stoney Point to its original inhabitants and their descendants from whom the land was seized.”

And as Ms. Holmes wrote in her report for the Ipperwash Inquiry, “[a] round of active political protest at Camp Ipperwash began about July 1990.” Three years later, exasperated with their failed attempts to have their reserve returned, the Stoney Point people decided to occupy the military range at Camp Ipperwash.

## LIFE AT STONEY POINT PRIOR TO THE APPROPRIATION BY THE CANADIAN GOVERNMENT

### 3.1 Introduction

Three generations of Aboriginal witnesses testified at the Inquiry about life at the Stoney Point Reserve before the 1942 appropriation by the federal government. Some of the Aboriginal witnesses, such as Clifford George, Rose Manning, and Bonnie Bressette, were born on the reserve and spent some or all of their childhood at Stoney Point. Others, such as Marcia Simon, Dudley George's sister Carolyn George, Tina George, Roderick George, and Elwood George, to name but a few, had parents who spent many years living, working, and participating in communal activities on the Stoney Point Reserve before they were forced to leave their land. And finally, there was a third generation, teenagers and younger children, who learned about life at Stoney Point from accounts of their grandparents and parents, by visiting the land with their relatives, and by listening to stories from Elders. Some of these witnesses included Nicholas Cottrelle, Kevin Simon, J.T. Cousins, Wesley George, and Glen Bressette. These witnesses of various ages described a self-sustaining Aboriginal community deeply attached to their land, a sharing community that operated to a great extent by consensus.

This chapter provides a description of life on the Stoney Point Reserve, as recounted by Aboriginal witnesses at the Inquiry.

### 3.2 The Stoney Point Reserve Before the 1942 Appropriation

Clifford George<sup>1</sup> was born in 1920 and lived on the reserve for nearly two decades before the Canadian government appropriated the land pursuant to the *War Measures Act*. As Mr. George said at the hearings, on March 11, 1920, midwife Lena Lunhem delivered him at the Stoney Point Reserve:

... she's the one that brought me into this earth — into this world ...  
[S]he was a great lady, a great medical lady ... she was a midwife for  
just about everybody ....

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<sup>1</sup> Clifford George, an Elder, died on September 30, 2005, during the Part I hearings. He gave his evidence at the Inquiry on September 10, 20, 21, 2004. Mr. George attended the hearings almost daily before his death.



... when I was born, she delivered another young woman in Kettle Point first, and she walked through the bush [for 3½ to 4 miles] to Stoney Point and she got there in time to ... bring me into the world.

Clifford George's grandparents, Levi Johnson and Hanna Johnson White, had an eighty-acre farm on the reserve. They had two barns, animals, and a large garden in which fruit and vegetables were grown. His grandfather constructed the first brick building on the reserve. Their land was on what later became the military base. Many other family and friends also had property in this area. Clifford George said some members of the community, such as Albert George, lived on what later became Ipperwash Provincial Park. Albert George was Dudley George's great-grandfather.

Clifford George described a self-sufficient reserve. The land provided their food, medicine, and the resources necessary for their livelihoods: "We had everything in that reservation for our needs ..." In spring, morels appeared, followed by strawberries, raspberries, and thimbleberries. Various plants and herbs were the source of their medicines. Clifford George's father, William George, and other Stoney Point residents (such as Robert George) were carpenters. They collected cedar to build furniture, tables, and various kinds of chairs. As Clifford George said, the reserve land basically provided all of their necessities — it was "ideal for just about anything ... through the different seasons."

Stoney Point residents had a communal orientation.<sup>2</sup> People on the reserve helped each other and shared resources. For example, when a deer was killed during the hunting season, they "split it with all the other people."

Clifford George was educated on the Stoney Point Reserve in a one-room schoolhouse. His teacher, Liz McKinnon, taught Grades 1 to 8. She had forty acres on the reserve next to his grandparents' property. Mr. George's education ended at the age of fourteen after he completed eighth grade. He and other witnesses stressed that substantial barriers existed for First Nations people who wished to pursue higher education, such as professional degrees. Aboriginal people who decided to continue their studies and become lawyers or doctors, for example, were required to enfranchise under the *Indian Act*.<sup>3</sup> In other words, they were forced to relinquish their Indian status and they were no longer permitted to

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2 Such communal orientation is common of Aboriginal people.

3 The *Indian Act* provision, which has been repealed, stated: "Any Indian who may be admitted to the degree of Doctor of Medicine, or to any other degree by any University of Learning, or who may be admitted in any Province of the Dominion to practice law either as an Advocate or as a Barrister or Counsellor or Solicitor or Attorney or to be a Notary Public, or who may enter Holy Orders or who may be licensed by any denomination of Christians as a Minister of the Gospel, shall *ipso facto* become and be enfranchised under this Act."

live on the reserve. In the words of Clifford George, “you were now classed as a white man.” His four sisters were among the many children who were forced by the federal government to attend residential schools.<sup>4</sup> Like other First Nations children, they suffered the loss of their language and much of their culture.

It was clear from the testimony that Stoney Point residents have a deep connection to their land. Mr. George echoed the view of the Aboriginal witnesses that they had been placed on their self-sustaining reserve by the Creator:

... the Creator put us there on account of all the essentials ... that we needed on the reserve itself, the medicines and all that, the wood lots and everything that goes with it. So, we have a very strong conviction about all that, that they were spiritually given to us many years ago.

Clifford George’s mother, Mabel, died in 1939, a few years before the federal appropriation. She was buried on the Stoney Point Reserve.

Rose Manning was born at Stoney Point in 1933 and spent almost a decade of her life on the reserve. She clearly recollected her early childhood, which she described as wonderful years: “I had the best years in Stoney Point.”<sup>5</sup>

Rose Manning’s life was centred on the reserve. She went to school and church at Stoney Point. Anishnabe is her first language. As Rose Manning said, “[W]e talked nothing but our own language at that time.” Mrs. Manning’s father, Willington Elijah, was Chief Councillor of the Stoney Point Reserve.

Rose Manning’s grandparents and parents shared a house, and they jointly raised her and her siblings. They had ample land, and a farm with chickens and horses. The milk they drank came from their cows. They “never went hungry. There was always plenty of food there and they were always well dressed.”

Her childhood memories include gathering nuts and picking morels and berries, “the biggest thimbleberries that you can ... find anywhere.” She helped hunt game such as rabbits and squirrels, and she remembers the tasty rabbit stew that was a regular part of her diet. People on the reserve canned their produce, which sustained them in the winter months. Her mother weaved baskets, and Rose Manning was taught to make quilts. Other Stoney Point residents crafted axe and other types of handles used for tools and farm implements. A handle constructed from hickory “was the best” and “the most expensive.”

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4 Residential schools were boarding schools for Aboriginal children that operated throughout Canada for over a century. The Canadian government and religious organizations operated the schools. Abuses were committed against the children. According to Statistics Canada, approximately 80,000 living Aboriginal children are former students of the residential school system. Indian Residential Schools Resolution, Department of Indian and Northern Affairs, [www.irsr-rqpi.gc.ca](http://www.irsr-rqpi.gc.ca)

5 Rose Manning died in the summer of 2006 before the Final Submissions at the Inquiry.



Rose Manning felt secure on Stoney Point Reserve. She knew all the members of her community: “I knew all the people there and I trusted all the people there and they trusted each other ... it was a sharing, caring community.” She said, “[W]e had a good life there ... we had lots of land.” She “was a happy child.”

Rose Manning’s grandfather passed away before the 1942 appropriation, and he was buried in the cemetery at Stoney Point. Her sister died before him in the same year, and her gravesite is also on the reserve.

Rose Manning had twelve children and is the grandmother of approximately sixty grandchildren.

Bonnie Bressette, Chief of Kettle and Stony Point First Nation from 1988 to 1990,<sup>6</sup> was also born at Stoney Point and spent her early childhood on the reserve. Like Clifford George and Rose Manning, she described the self-sufficiency of her people and their deep connection to the land. Her parents, Bruce and Hilda George, had land on the reserve along Highway 21. They cleared an area on which they had a house and garden. They also had bush lots for timber and medicinal herbs. Her grandparents, Robert and Laura George, had a farm west of their property with horses, ducks, geese, chicken, and a large garden. As Bonnie Bressette said, her family and other members of her reserve sustained themselves largely from the land.

Bonnie Bressette discussed the separate identities of the Kettle Point and Stoney Point Reserves prior to 1942. They were two self-reliant communities, each with their unique attachment to the land on which they lived. Relations between the two communities were good. Representatives from each reserve met regularly to discuss matters of joint interest. Chief Tom Bressette confirmed that prior to the taking of the lands in 1942, Aboriginal people who lived at Stoney Point and at Kettle Point operated on the Anishnabek principle of consensus.

Bonnie Bressette lamented the deplorable years her people spent in residential schools and she discussed the assault on the traditions of the Anishnabek people. Many people in her community were forced to attend residential schools, where they were taught that “our ways were not the right way.” Her mother, Hilda George, was sent by the government to the residential school at Mount Elgin, as was her Aunt Melva George and her Uncle Calvin. Teachers beat her mother when she spoke Anishnabe, the only language Hilda George knew. Bonnie Bressette recounted an incident told to her by her mother:

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6 Bonnie Bressette has also been a Band Councillor since 1968, with the exception of the two years in which she served as Chief of the Band 1988–1990.

My mother ... she was sewing, they had these big sewing machines, and she was sewing this thick material. And she said ... when she was pulling on that thick material — and it happened to me a couple of years ago, same thing — the needle went right through her thumb and she forgot her English and start[ed] yelling for help in the language ... [T]he headmistress that was there told her she was not going to help her till she spoke in English, and my mum said that was the hardest thing when she was hurting, to remember English to ask for help.

Hilda George snuck food to her younger brother, who she worried would become sick from malnourishment. As Bonnie Bressette said, it

[d]estroyed a whole family when you had to live under Indian Affairs, that's the way life was ... they could dictate to you on practically who you could have as a neighbour.

The strong attachment of Stoney Point people to their land was evident. Bonnie Bressette described the deep connection that her father, her uncles, and their friends had to the reserve: “[T]hey had such a feeling for that land.” As the former Chief stated, “as a Anishnabek person ... the land is life.” She also said:

We are the Anishnaa people, Anishnabek, and we were placed on this land by the Creator, and we were given this land to look after.

... the Creator put us here on Turtle Island, North America ...

... That's why Anishnaabe people, you don't see us in other countries, we didn't move to Africa, we didn't move to France, we didn't move to Germany. We were placed here in North America, Turtle Island, that's why the land means so much to us.

Bonnie Bressette maintained that the 1928 surrender was not a valid or legitimate transfer of the lands that later became Ipperwash Provincial Park. She said:

I believe it's one of the many wrongs that was done ... for our people when they knew how important land is for life. And when the newcomers came over to this land, that's why they shared the land with them ... it's our meaning of the land. The land is our life. Our life here today, and it's life for the future generations. So I believe that's why people shared the land. But that 1928 surrender, as far as I'm concerned, was just ... another rip-off that we have to address.



### 3.3 Children of Former Stoney Point Residents

Many of the children learned about life on the reserve by listening to the stories of Elders, their parents, and grandparents. They also visited the land to gather food, to collect medicines, to visit the burial sites of their ancestors, and for recreational purposes. Several Stoney Point descendants also read historical documents and examined Department of Indian Affairs records to learn about their roots.

Abraham (“Hamster”) and Muriel Elsie George were the parents of Roderick (“Judas”), Tina, Stewart (“Worm”), and Elwood George. Abraham George was a young married man when he, his wife, and his parents, Robert and Laura George, were forced to leave Stoney Point Reserve in 1942. He often talked to his children about life on the reserve.

As recounted by his son Roderick George, forty acres of reserve land were set aside for Abraham George and his young wife before the federal appropriation. Community members helped each other with work on their respective farms. Abraham George regularly went into the bush to cut logs and hunt game. He and his brother Dan George made maple syrup on the reserve in big kettles made of cast iron. Roderick also learned that the park was a gathering spot for Native people. Medicine and herbs from the surrounding area were brought to the park, which served as a health “clinic.”

Roderick George learned about the history of Stoney Point and the surrounding land. He said that prior to the Treaty of 1827, the land at Stoney Point, as well as land surrounding the reserve, belonged to his people. By virtue of the Treaty of 1827, First Nations people ceded some of their land in the region to the British Crown. However, he claimed that the land at the provincial park remained the property of the Aboriginal people; it is ceded land reserved for First Nations people in perpetuity. Roderick George considers the park the property of his people and contests the validity of the 1928 sale; it remains part of “Aazhoodena.”<sup>7</sup> This view was shared by many other Aboriginal witnesses.

Abraham George told his children Elwood, Stewart, and Tina that their ancestors’ gravesites are in what is now Ipperwash Provincial Park. He said his younger brother Fletcher was buried in the park, as was his grandfather Albert George (“Komani”), whose grave is “amongst the big willow trees ... on the east side of the pump house.”

Abraham’s children visited the Stoney Point land. They went into the bush to pick morels, they cut wood, and they went to the beach.

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7 Many of the occupiers referred to the former Stoney Point Reserve as “Aazhoodena.”

Ron (“Spike”) George’s father, Robert, was ten years old when he was moved from the Stoney Point Reserve. Ron’s grandparents<sup>8</sup> had property on what became known as the grenade or sten range at the Ipperwash military base. Dudley George’s father, Reginald Ransford George,<sup>9</sup> and Abraham George (“Hamster”) were brothers.

Throughout his childhood, Ron George was aware of the connection between his family, his community, and the Stoney Point lands. He often heard his father and uncle discuss these attachments, and Ron George regularly visited Stoney Point during his youth. He spent time in the bush hunting with his cousins, Wayne Bressette and Bruce George Jr., and he swam and fished for bass on the inland lakes.

His grandfather and father cared for the gravesites at Stoney Point. Ron George visited these burial grounds, which were east of the area where he picked morels. His father showed him his aunt’s grave<sup>10</sup> and he knew his Uncle Fletcher was also buried at Stoney Point. When Ron was about sixteen or seventeen years old, his Uncle Abe told him there was a burial site in the provincial park.

Marcia Simon’s father was twenty-one years old when he was forced to leave the Stoney Point reserve in 1942. Her understanding of life on Stoney Point was acquired through stories told to her by her parents and Elders, by her visits to Stoney Point during her childhood, and by reading historical records.

Marcia Simon’s parents, Dan and Melva George, would pack their car with their twelve children and drive to the former reserve. In winter they skated at the military base on a lake along Highway 21, and in the warm weather they swam at the beach. Her father, a skilled craftsman, collected cedar to make furniture. Marcia Simon loved her trips to Stoney Point, and particularly her visits to the inland lakes, which she described as

... really beautiful ... it’s like food for your soul. You go in there and you can become restored ...

Marcia Simon and her family also visited the sacred burial grounds of relatives on the reserve.<sup>11</sup> She saw the grave markers of her father’s sister, Marlene, but did not know the precise location of her Uncle Fletcher’s burial site.

Marcia Simon was told that her grandfather Albert George (“Komani”) lived on what became Ipperwash Provincial Park. She considered both the land at

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8 Robert George Sr. and Laura George

9 Reginald (Reg) Ransford George Sr.

10 Ron George thinks it was either Aunt Marlene or Nora.

11 All burial grounds in Aboriginal culture are considered sacred. Darlene Johnston, July 14, 2004, p. 205.



the military base and at the park her people's ancestral lands. Like other Aboriginal witnesses who testified, Marcia Simon did not consider the 1928 surrender of treaty lands, which later became Ipperwash Provincial Park, a fair or valid transfer of First Nations lands. As she said at the hearings, "I always felt that the history was forgotten, they weren't aware of the laws, the treaties that pertain to us."

Marcia Simon described the "horrible, horrible experiences in our families of what was done to our people in the residential schools" and the "scars with many of us." As mentioned, her mother, Melva George, was sent to Mount Elgin residential school. As an adult, Melva George would "cry, broken-heartedly over what was done to them." Her young brother, Calvin, was knocked to the floor for speaking his Aboriginal language.

Elizabeth Stevens, a Band Councillor at Kettle and Stony Point for six years and a Band Administrator for another six years, shared a similar view of the history of her people.<sup>12</sup> Her father, Gordon, and grandparents Sheldon and Jeanette Cloud, were from Stony Point. Her mother was from Kettle Point.

Ms. Stevens' understanding of the history of Stony Point was that the Crown made promises to her people in the Treaty of 1827. The British confirmed that ancestral lands, which encompassed the Stony Point and Kettle Point Reserves including the land that is now Ipperwash Provincial Park, would remain in their possession in perpetuity. In the early 1900s and at the time of the 1928 surrender, the federal government's goal was assimilation and the disappearance of First Nations people as a distinct people. Ms. Stevens stressed that although her people relied on the Indian Agents to represent them, as required under the *Indian Act*, they rarely acted in the best interests of First Nations people. Great pressure was placed on First Nations people to surrender their treaty land, which in "the majority of cases, possibly all of them, were never in favour of the people."

Dudley George's sister Carolyn ("Cully") explained that traditional knowledge and information about life at Stony Point as it existed before the 1942 appropriation were passed on by her father, Reginald George Sr., and grandfather Robert George. An excerpt of her evidence follows:

He told me a lot about when he lived there ... how they used to go cut wood, and he'd have to take the horses out to haul the wood back in. He told me about how deep the snow used to get then, where they

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12 Elizabeth Stevens was a Councillor from 1997–2001 and was re-elected in 2004. She was Band Administrator from 1991–1997.

couldn't get out the door. And he told me, too, about going with my grandparents to the market to take things that they had made to sell ...

My grandfather used to make axe handles and other woodwork and things, and my grandmother made baskets ... lace, and quilts. I don't ever recall ... like they had gardens and stuff, but I don't think they ever took their produce there.

Carolyn George also remembers visits with her father to the sacred burial sites at Stoney Point. She recalls hunting on the land with her brother Reggie and cleaning the squirrels and rabbits that he shot.

Gerald George's mother was born at Stoney Point reserve in 1937. His grandfather Sheldon Cloud and his mother, Eloise, described their way of life, and the interaction between people at the Kettle Point and Stoney Point Reserves. Although two separate tracts of land and two separate communities, the Stoney and Kettle Point Reserves were administered by one First Nations Council. There were constant visits, much intermarriage, and consequently many people in the two reserves were related. This was confirmed by Elizabeth Stevens, Band Councillor and Administrator for many years of the Kettle and Stony Point Band. As she said at the hearings, "almost anybody in the band can trace some descendant back to Stoney Point."

As a child, Gerald George went to the beach with his father in the summer months, and every winter they entered their former reserve to cut down a Christmas tree. Mr. George fished bluegills in the lakes, and hunted deer and muskrat to the north and east of what became the mortar range.

### 3.4 Grandchildren of Former Stoney Point Residents

And finally, a third generation of witnesses, children, teenagers, and young adults at the time of the occupations in the 1990s, discussed the history of the land as it was conveyed to them, and the attachment they felt to the Stoney Point Reserve. It is well known that in Aboriginal culture, history and customs are transmitted orally through the generations by stories and teachings.

Children such as David George, Nicholas Cottrelle, and Wesley George were told by their grandfather Abraham George that their ancestors were buried in the park and on the military base. They learned the traditional teachings about the sacred sites and how to care for their deceased relatives. As Wesley George explained, "you're supposed to feed the spirits and give them tobacco when you talk to them or sage, cedar."



Abraham (“Hamster”) George told Nicholas Cottrelle about the gravesites in the park on the road next to the maintenance shed. He described to his grandson the many picnics in the park he had enjoyed as a child.<sup>13</sup>

Kevin Simon spent much of his youth with his grandfather, who helped raise him while his mother, Marcia, attended school. Kevin’s grandparents, Dan and Melva George, lived next door. Dan George recounted stories about Stoney Point, where he spent the first two decades of his life. He often drove his grandson around the perimeter of the reserve, describing the muskrats he trapped in the bush and the wood he cut to make axe handles and cedar fence posts. Dan George also spent time talking to Kevin about the park. He said this land was part of the Stoney Point Reserve, that his grandfather George Mandika had lived in the park, and that First Nations people were buried there. Kevin Simon learned that cedar in the park was used for Aboriginal cleansing ceremonies.

J.T. Cousins and Jeremiah George were two other children who learned about life in Stoney Point from Rachel Skawkence, an Elder, who was also J.T. Cousin’s great-grandmother. Rachel Skawkence took Jeremiah George to Stoney Point to teach him about the medicines on the land. She showed him ginseng root, which apparently only grows in two places on the reserve. J.T. Cousins learned about the burial grounds in the park, and he swam in the lake and played in the dunes of the army camp. Jeremiah hunted with his brothers and cousins during deer and rabbit season. Jeremiah was the youngest of ten children; his brothers are Stacey (“Burger”) George and Cecil Bernard George.

### 3.5 Conclusion

It was clear from the three generations of Aboriginal witnesses who testified at the Inquiry that the Stoney Point people have a deep emotional and spiritual attachment to their reserve. They believe the Creator placed them on that land with the lakes, bush, and plants necessary to provide food, shelter, and medicine. They also have a deep connection to the gravesites in which their ancestors were buried.

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<sup>13</sup> Wesley George was thirteen years old at the time of the 1993 occupation and Nicholas Cottrelle was fourteen. Nicholas Cottrelle is the son of Roderick (“Judas”) George. Wesley’s father is Elwood George.

## THE 1942 APPROPRIATION

### 4.1 Introduction

The federal government, pursuant to the *War Measures Act*, passed an Order-in-Council authorizing the appropriation of the land at the Stoney Point Reserve. As is discussed in Chapter 2, the federal government took the position that it was necessary for the Stoney Point people to leave their reserve as the Department of National Defence required the land for a military training camp for soldiers who would be sent overseas to fight in World War II. Despite opposition by the Kettle and Stony Point Band and a vote by them that clearly indicated the Aboriginal people did not want to leave their homes and land, the federal government compelled the Stoney Point people to relocate in the spring of 1942. The Canadian government promised the Aboriginal people that the land would be returned and that the relocation would only be temporary.

This section discusses the impact of the 1942 appropriation as described by Aboriginal witnesses who testified at the Inquiry. It describes the emotional turmoil of the forced relocation of the Stoney Point people, the loss of their livelihood and self-sufficiency, and the friction that resulted between the Aboriginal people in Kettle Point and Stoney Point.

Many people from Stoney Point were firmly convinced that it was not necessary for the Department of National Defence to use their particular land as a training camp. There were other properties in the area that were equally suitable for the military's needs.

### 4.2 Were There Alternative Suitable Sites for the Military Camp?

Aboriginal witnesses maintained that the Canadian government had several options available in the area for the establishment of a military camp, other than the land at the Stoney Point Reserve. They were of the firm conviction that the dislocation of their people, who had lived on that land for many generations and who had a deep connection to this land, was unnecessary.

According to a document from the Chippewas of Kettle and Stony Point First Nation, the Department of National Defence had previously established the Pinehill Camp training facility in 1938 on land near Thedford, a few kilometres from the Stoney Point Reserve. Local merchants supplied the needs of Pinehill



Camp. Despite the intense local lobbying to keep the base open as a permanent facility, the military training facility was closed in 1940.

According to Clifford George, a resolution was passed by the Council at Thedford that offered Pinehill Camp to the military without charge for the duration of the war. The Department of National Defence declined, mainly because it would be too costly to provide an adequate water supply system to Pinehill Camp. Mr. George said, “[W]e were quite aware of the huge piece of land there that was offered to them.” He maintained that to save the expense of installing pipeline to Pinehill Camp, the federal government decided to move people from the Stoney Point Reserve to the Kettle Point Reserve in violation of the Treaty of 1827. Clifford George said:

The *War Measures Act* should never have been implemented ... on a reservation — on us. There was no need for it.

Elizabeth Stevens, Band Councillor and Administrator at the Kettle and Stony Point Reserve, also believed it was completely unnecessary for the federal government to seize the Stoney Point Reserve in 1942. There were neighbouring properties that were a “perfect choice for the army to take in 1942 and they chose not to.” Cottage properties and other land not protected by a treaty, she argued, could have been appropriated by the Department of National Defence rather than the Stoney Point Reserve. Ms. Stevens agreed that the seizure of a complete reserve is one of the most egregious acts committed against First Nations people in the twentieth century.

Stoney Point residents clearly voiced their opposition to the removal of their people from the reserve land. As discussed in Chapter 2, Mrs. Greenbird and others wrote letters of protest to the federal government, lawyers were contacted, and significantly, the people on the reserve unequivocally voted against the federal appropriation.

First Nations people claim that the federal government either did not understand the connection of the Stoney Point people to their land or were indifferent or insensitive to their deep attachment. They believe that the Creator gave the land to their people. In the words of Clifford George, “the Creator put us there” with all the resources necessary for [our] subsistence:

... everything was there for our livelihood ... everything was in there. Even to the weaving of baskets, the making of chairs, the timber and everything, the fish, because we used it all. Everything.

Stoney Point people “have a very strong conviction” that the land on the reserve was “spiritually given” to them. Clifford George agreed that the Canadian government had several land options in the area on which to establish a military training base, including large farm lots near the reserve owned primarily by retired people:

As far as I’m concerned, they had ample lands right across from us there, which was only three farms in that mile and a quarter and it was open land. And these people that owned that land would have — because they [were] retired anyway.

Former Chief Bonnie Bressette, who, like Clifford George, grew up on the Stoney Point Reserve, believes the federal government paid little attention to the spiritual attachment and economic dependency of the First Nations people to this land:

... the attachment that my aunts and my uncles and my grandparents had for the land, and all the other people that moved from there ... it was their life, their life was on that land.

In her view, it was precisely because the land belonged to Aboriginal people that the federal government thought it could more easily and with less resistance set up a military training camp on that property. As she said at the hearings:

A: [I]t was home and they didn’t consider it our home; it was just Anishnaabe people on there.

Q: It was easy to take?

A: Yes.

### 4.3 The Forced Relocation in Spring 1942

Residents of Stoney Point described the forced relocation by the federal government as devastating and “traumatic.” Rose Manning remembers that even before they were evicted, the military began to construct buildings in preparation for the army camp. Government officials also moved machinery onto the reserve to extract stone from the quarry:

... they brought in some big machinery and they started chopping in the ground and they got the finest of stone out of that stone quarry ...



And we were still living there. They were starting to build an army camp at that time.

Daniel George and other residents of Stoney Point felt powerless to confront the federal government. As he explained to his grandson Kevin Simon, “it was something that should not have been done but ... they had no course of action to basically fight it.”

Aboriginal people who lived on the reserve at the time of the 1942 appropriation recalled the emotional and physical upheaval of that spring day when they were evicted from their land. Some homes were bulldozed and others were placed on blocks and moved. The move took place during the day. People returned from work to find their reserve abandoned, their homes destroyed, and their belongings broken. As Rose Manning said:

... they jacked up their house and took them without even wrapping their dishes up, and they [came] home with broken dishes on the floor and no handles on their cups. And there w[ere] a lot of stories like that.

Bonnie Bressette remembers the day her house was lifted onto blocks and moved to a field at Kettle Point:

It was kind of like out in the hayfield, because I know the weeds [were] about that high ...

Then they put our house out in the field ... [I]t was up on these big blocks for a long time until he [her father] was able to get enough money for a foundation to put the house back down again because we had to climb up on these big blocks that he had put there for steps.

Her father received a paltry sum, approximately \$70, for the relocation. The land at Kettle Point to which people were transplanted was much smaller in size and lacked the resources necessary to sustain families. As former Chief Bressette explained, “[M]y dad relied an awful lot on the bush, but ... at Kettle Point at that time, he didn’t have [any] bush.” At the Stoney Point Reserve, her family had been completely self-sufficient. The government did not give her father money to buy land at Kettle Point.

Liz McKinnon, Clifford George’s aunt and schoolteacher, had forty acres of land next to Clifford’s grandparents’ property. Liz McKinnon was another Stoney Point resident who adamantly did not want to leave the reserve. Clifford George

described her forcible removal as Ms. McKinnon sat on her porch with a shotgun across her lap:

... she sat on her porch, daring people to come over ... [B]ulldozers were right behind her house, ready to bulldoze it down, and she sat in her chair outside with a shotgun across her knees, just daring people to come.

And that's why they had to pick her up; I don't [know if] the gun was even loaded. But she was just trying to scare them. But that didn't stop them ... they just picked her up with her gun and all, and put her in her truck, and they bulldozed her place down.

They d[id] that to most of the houses there, and, as you know, nobody's able to keep up fixtures on the houses and stuff like that ... [A] lot of the houses ... [weren't] moveable at all ... so there was a very few ... that [were] moved to Kettle Point at the time.

Clifford George's grandparents' two-story home was bulldozed, as were their two large barns and chicken coops. As Mr. George sadly said, "[T]hey were all just destroyed." His grandparents lost their farm and their bush lots. People were inadequately compensated for the loss of their land and their resources, which included plants from which their medicines were made.

Mr. George estimated that twenty-one families at the Stoney Point Reserve were compelled to leave in 1942. He acknowledged that the federal government figures are lower but explained that sometimes as many as four families lived in one house.

Rose Manning's family home was placed on blocks and transported to swamp land at Kettle Point. She recounted her childhood memory of the spring 1942 relocation: "[W]hen I woke up, I woke up in this big swamp with our house just on boulders, and when you tried to go outside, there was just nothing but reeds and weeds and everything else." Mrs. Manning continues to live at this site. She explained that it was extremely difficult for Stoney Point residents to leave behind deceased family members buried in graves on the reserve, such as her grandfather and sister: "[I]t is a sad situation when you have to leave your grandfather and your sister behind." She remembers the deep sorrow of her parents as they left Stoney Point.

Gordon Cloud (Elizabeth Stevens' father), was about ten years old that spring day in 1942 when his family was forced to leave their land. His mother, Lucy, did not want to leave her home and her reserve, and in desperation tried to chase



away military officials with a broom. Gordon Cloud was so frightened he hid under the porch: “[H]e was very afraid that day”; it was a “very traumatic experience for him.”

Daniel George was just “coming of age” at the time of the 1942 appropriation and did not receive his forty-acre allotment. Instead, he had a small piece of land at Kettle Point surrounded by gravel pits on which to raise his family. Mr. George tried to fill the pits with garbage collected from nearby cottages. His attempts to farm the land and raise chickens and pigs did not meet with much success, according to his daughter, Marcia Simon.

Several other Aboriginal witnesses recalled the trauma experienced by the Stoney Point people as they left their land, their burial grounds, and their means of economic self-sufficiency. Roderick and Stewart George described the small one-half-acre property on which their parents, Abraham (“Hamster”) and Muriel George, raised their eleven children. Bonnie Bressette, who became the Kettle and Stony Point Economic Development Officer and was also Chief and a Councillor of the Band, spent time in her testimony discussing the importance of economic self-sufficiency to the confidence, happiness, and well-being of her people. She believes that economic development on the reserve is fundamental to building a positive Aboriginal self-image. As she said at the hearings:

... economy is important for people to have a satisfactory, enjoyable life. They [must] have jobs, good homes, be able to provide for their families ...

... without an economic base, people become dependent on the social system, and the social system creates no happy life for anybody whether they're on the reserve or off the reserve.

#### **4.4 First Nation People Serve in the Canadian Military**

Several First Nation people from the Stoney Point and Kettle Point Reserves enlisted in the army to assist the Canadian government in its military efforts against the Germans in World War II. They joined the military both before and after the 1942 appropriation.

Clifford George was twenty-one years old when he enlisted at the 62nd Battery Anti-Aircraft Regiment in London, Ontario. Most of his training was overseas. His regiment was active in England, defending the country from bombers, and earned a number of medals from the Battle of Britain. He was also involved in re-taking Dieppe in France. Mr. George was captured in Italy and became a

prisoner of war, where he experienced extreme hunger and cold, and witnessed the horrors of war.

Clifford George's two older brothers, Clarence and Kenneth, also served in the Canadian military during World War II. Clarence was wounded in Holland. Other people from the Stoney Point Reserve, including several members of Bonnie Bressette's family, also became Canadian soldiers. One man from each reserve died overseas—Lloyd Bressette from the Stoney Point Reserve,<sup>1</sup> and Herman Henry from the Kettle Point Reserve.

Dudley George's father, Reginald Ransford George Sr., served in World War II, as did his mother. Carolyn George, Dudley's sister, said her father told her he "joined up the Army so that he could help get the war over, so he'd be able to move home.... [H]e was told that they would be able to go home after the war." To his disappointment, after Reginald George's military service, the Department of National Defence did not return the reserve to the Stoney Point people. Carolyn George remembers her father talking longingly about the Stoney Point Reserve when she was about thirteen years old. He was "really sad, like he had no hope of ever getting the land back even though they had promised to give it back ... it wasn't looking hopeful at all." Reginald George Sr. died in 1985. He was buried at Kettle Point. His aspiration of returning to his homeland was never realized.

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<sup>1</sup> Stacey George's uncle, brother of his mother, Genevieu George.





## EFFECTS OF THE APPROPRIATION

### **5.1 Introduction**

The appropriation of the Stoney Point Reserve by the federal government was very difficult for the Aboriginal people. Soldiers from the Stoney Point Reserve returned from serving in the Canadian military to find their homes and community had disappeared. Elderly members of the Stoney Point Reserve found the relocation a tumultuous experience that affected them emotionally and physically. The Stoney Point people also struggled economically to sustain themselves on small parcels of land they were compelled to move to at Kettle Point. The transplantation of people from the Stoney Point Reserve to Kettle Point also created friction between the two communities. And, importantly, Stoney Point residents were devastated that the gravesites and burial grounds at their reserve were not protected as promised by the Canadian government.

This section chronicles some of the struggles encountered by the Stoney Point people after they were transplanted from their reserve to the Kettle Point Reserve.

### **5.2 Soldiers Return from War and Economic and Emotional Hardship**

Upon their return from military service in World War II, Aboriginal soldiers from the Stoney Point Reserve were greatly affected by the disappearance of their homes and their community. They had witnessed severely and fatally wounded soldiers and civilians in Europe, and they had endured difficult physical conditions. They very much needed the comfort and support of their community to help them recuperate from the horrors of war. Yet they returned to find army barracks in place of their homes on the reserve, and the dislocation of their parents, siblings, friends, and Elders. Reserve members struggled to adjust, emotionally and economically, to the forced relocation.

Clifford George testified that his brother Kenneth was in “bad shape” when he returned to Canada from his overseas military service. He had been “shell-shocked” in Italy and was medicated. In uniform, Kenneth George hitchhiked from Guelph to Stoney Point and was disoriented and confused when he arrived at his reserve. Barracks had replaced the homes, farms, and gardens at the Stoney Point Reserve.



Not knowing where he should go, Kenneth walked down the road and slept the night in a ditch. A segment of Clifford George's testimony is reproduced:

So, when he got there, to where his home was, he looked around and found that it was a barracks, and he couldn't understand and he lost it again on account of, you know, "where am I now?" So, what he [did was] he walked a little ways down the road ... and he slept in the ditch for the rest of the night because he didn't know where to go, didn't know what to do ... But he recovered by morning when he looked around, and then he suddenly realized this is Stoney Point, my home, and it is now a barracks, and then all the recollection c[a]me back to him, and so he walked the rest of the ways to Kettle Point, to my grandmother's.

Before Clifford George left the reserve to fight overseas in the Canadian military, he had selected four acres of land next to the park where he intended to live upon his return from Europe. He returned to Canada a newlywed, having married a woman in London, England. Because of the federal appropriation during the war, Mr. George contacted Mr. McCracken, the Indian Agent, to ask for a piece of land at Kettle Point on which to build a home. Mr. George soon learned he had enfranchised involuntarily. He never received the four acres of land to which he was entitled on his reserve at Stoney Point, or his inheritance from his parents on Stoney Point. Mr. George said:

... What happened to these people that weren't registered as Natives, they just disappeared ... that's the term they used to use, you don't belong. I was one of them.

Bonnie Bressette and other Aboriginal witnesses also confirmed they "had family members who lost their status and they weren't even aware of it."

The Stoney Point people no longer had adequate land on which to sustain themselves. Many could not farm or grow produce. They had insufficient acreage, and the quality of the land was not always suitable for cultivating vegetables or fruit. Before the appropriation, the Stoney Point people harvested produce from their gardens in summer and fall for the winter months. But after 1942, people began to lose their self-sufficiency. As former Chief Bonnie Bressette said, without an economic base, people become dependent on the social system; people who have traditionally been economically independent are never happy in that dependency. At the hearings, she stressed that her people are entitled to an adequate land and resource base; they should be able to prosper and thrive socially,

economically, and culturally as Anishnabek people, living on the land on which they were originally placed.

The appropriation was particularly difficult on older members of the community. Clifford George believed it precipitated the deaths of some of the elderly:

Some of them old people [who had] never drank in their life started drinking. They grew big families and then ... they ended up drinking, you know, just to relieve all the problems that they were facing in the deal, and they couldn't handle [them] ... [A] lot of old people passed away on account of that. You know, their own lands, which they called their own, and then to be moved ... and not wanted where they [we]re and then the government just didn't ... realize, you know, the feelings of some of these people that [were] moved at that time ...

Access of the Stoney Point people to the military base changed. Initially military officials did not object to the collection of firewood, plants for medicines, or other resources needed by the First Nation people, but that gradually changed. The military began to build fences to limit access to the base. Permission to enter was imposed on former residents of Stoney Point who wished to collect firewood or medicinal plants. Even when permission was granted, "the army [was] right on our backs." Bonnie Bressette recounted the following incident:

... I took Bessie Bressette and Rachel ... they were Elders and I used to take them to get their medicine, and we had a hard time to get back in there. They let us go back in but they sent a jeep with two soldiers to follow us around back in there. All these women [were] doing was picking our herbal medicines.

### 5.3 Desecration of the Burial Grounds

The military promised to protect the burial sites when the Stoney Point people were evicted from their reserve in 1942. It quickly became apparent that no such measures had been taken to ensure the sacred grounds were either maintained or protected. On the contrary, from the broken tombstones to the graves full of bullet holes, it was clearly visible to the Stoney Point people that the military had desecrated their burial grounds. The disrespect and insensitivity of the military to these sacred sites deeply affected the First Nation people.

Clifford George's mother died in 1939 at the age of thirty-nine and was buried on the Stoney Point Reserve before the federal appropriation. Clifford's father, William George, wrote to his son who was fighting overseas, assuring him that



the army would maintain and protect his mother Mabel's grave. When Clifford and his two brothers, Kenneth and Clarence, returned from military service overseas, they were required to ask the army's permission to visit their mother's gravesite. As the George brothers approached the cemetery, they were devastated to see the missing and broken headstones, the rifle holes, and the trenches dug in the cemetery. Clifford and his brothers were unable to identify their mother's gravesite because of this desecration:

So we went there, and then it was absolute devastation to see the mess that the gravesite was. We couldn't even tell where my mother was buried, we just had an idea where she was buried, because at that time, nobody, not very many people, — [could afford a] headstone. But there [was] a headstone there for some, and it was all [pock]marked with rifle marks and ... shells just hung over the posts and stuff like that there, blanks of course, you know, where they're playing soldier.

Clifford George described the emotional reaction of his brothers and himself, three "hardened soldiers," when they saw the state of their mother's burial site:

Good hardened soldiers crying, crying our eyes out ... I told the people there ... that's a shame, you know, what they've done ... [W]e only had just a rough idea where my mother was buried.

Clifford George was surprised by the lack of respect and gratitude shown by the military to himself, his brothers, and other Stoney Point residents who served in the Canadian military during World War II:

It was bad for us, coming home from overseas after thinking that we helped the war out, and I always say to myself, I found all my enemies when I got home.

Shortly after the 1942 appropriation and the establishment of Camp Ipperwash, Bonnie Bressette visited the graveyards at the Stoney Point Reserve with her father. The fence around the cemetery was still standing, and she saw about six headstones at the graves. About a year later, Bonnie Bressette returned to the cemetery where only one headstone remained — it was lying on the ground, and the fence surrounding the cemetery was broken. She remembers that her father and his friend Sheldon Cloud were very distraught about the condition of the burial grounds. They pulled out weeds and tried to clean up the sacred site.

Bruce George, Bonnie Bressette's father, was from the Stoney Point Reserve. Among his last wishes before his death was to be buried at Stoney Point. The federal government refused permission, arguing that there was "unexploded ammunition" at the base, which Bonnie Bressette claimed has "always been their excuse." Bruce George died in 1968. He was buried at Kettle Point.

Both older and younger Aboriginal people were deeply upset by the military's lack of respect for their gravesites. The army's broken promises and the desecration of the sacred burial grounds saddened the First Nation people. Rose Manning, born at the Stoney Point Reserve in 1933, said:

... the Army promised us that they would look after the graveyard, and they would take good care of it, but they never did. It was all shot to pieces and there was no regard for the people that [were] buried there. I guess they just thought, well ... they're dead, and they don't know anything. They're just Natives. But if I were to go and dance on somebody else's graveyard I think they would jail me, right off — right away, but, you know, it's a sad situation.

Stewart George, born in 1957, remembers visiting the graveyards in his early teens. They were overgrown and the tombstones had been penetrated by bullets. And then there were younger Stoney Point descendants, people such as David George, born in 1970, who were also deeply affected by the desecration of the cemetery. He learned from his grandfather Abraham George that soldiers at Camp Ipperwash used the headstones for target practice. His grandfather's distress about the poor state of the cemetery was evident to David, who himself saw the bullet holes and destroyed tombstones:

I [saw] bullet marks. I [saw] headstones that have been destroyed and headstones that, you know, there's nothing left but a nub in the ground. Pieces broken off of the corners on other ones and, yeah, it's like that. Some — a lot of graves didn't even have headstones. It's kind of hard to find them because there's nothing there.

## 5.4 Friction Between Stoney Point and Kettle Point

A significant and fairly predictable problem created by the 1942 appropriation was friction between Aboriginal people from Stoney Point and Kettle Point. Despite the fact that Aboriginal people at both reserves had voted against the surrender, Stoney Point residents were forced to relocate to the Kettle Point Reserve. As



previously mentioned, the size of the land they moved to was much smaller and lacked the resources necessary for them to raise their families. They were also viewed as outsiders by the Kettle Point residents. This was perceived by adults as well as children, such as Gerald George's mother and aunt who were ostracized by Kettle Point children at school.

On the other hand, residents of Kettle Point were unhappy that their land was crowded with people from a neighbouring reserve. They were placed in a situation where they were forced to share their resources and their land. As Chief Tom Bressette said at the hearings:

It would be like me moving onto your property, and would you get upset with me? ... I think that's probably the kind of friction that [was] generated ... by the forced appropriation that was imposed, because there was a vote and everybody voted unanimously, and Kettle and Stony Point rejected that surrender. I mean, that's what the government wanted, and it was totally rejected by everyone ...

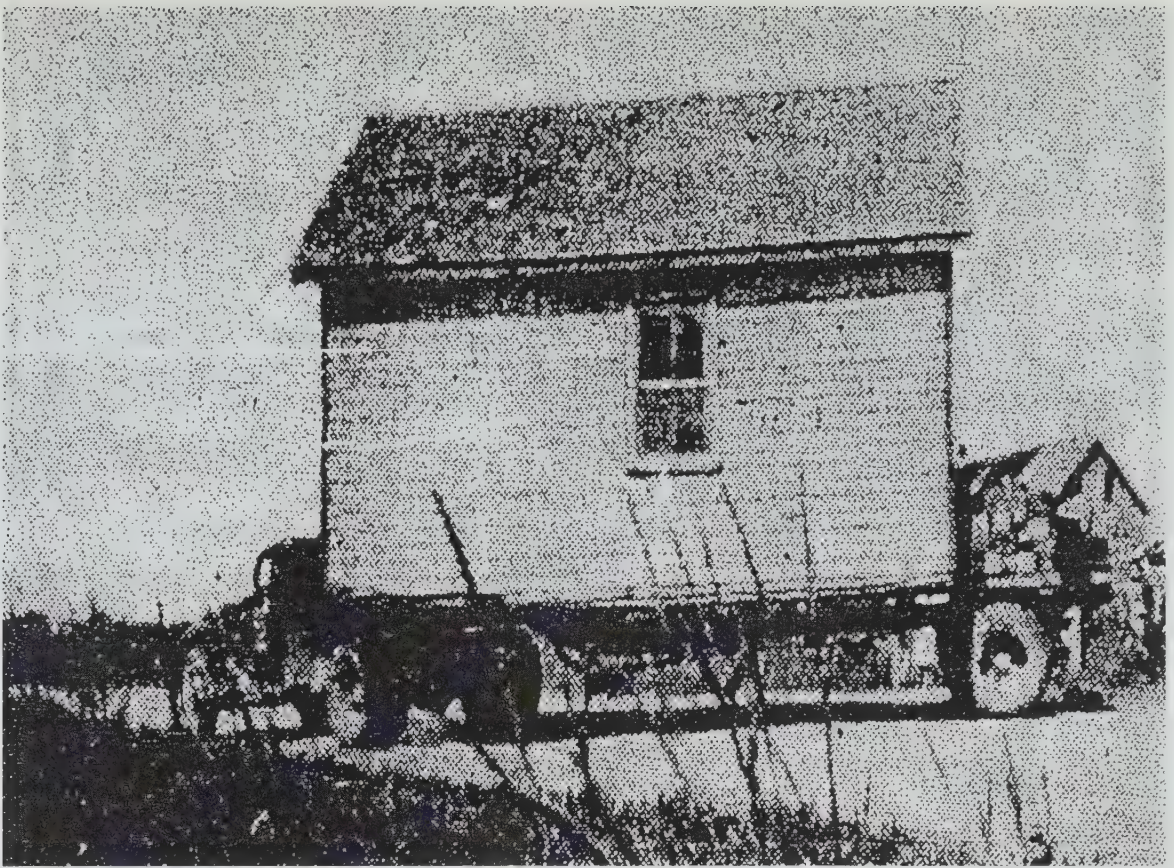
Clifford George also described the difficult situation imposed by the federal government on the two Aboriginal communities, many of whom were related:

The people were told that you must accommodate these Stoney Point people, which, by the way, they didn't want us over there and we didn't want to go there. So it was an awful lot of controvers[y] and ... like I say, they didn't want us there and we didn't want to go there. So it was very difficult. My father used to write to me about that. So it was difficult, you know, and yet we're all interrelated and intermarried but there was still — still a difference there. And because the government [did] that to us ...

Former Chief Bonnie Bressette and Band Councillor and Administrator Elizabeth Stevens echoed similar sentiments. People at Stoney Point were uprooted from lands they had lived on for generations and placed in an area that they had no desire to go.

Tension between these two groups continued and was further exacerbated when Stoney Point people occupied the military camp in July 1995, and when they occupied Ipperwash Provincial Park in September 1995. This is discussed in detail in the following chapters of the report. And as Bonnie Bressette, Elizabeth Stevens and other Aboriginal witnesses sadly stated, friction and adjustment problems continue to exist in these Aboriginal communities, sixty-four years after the appropriation by the federal government.





A house, believed to be that of Bonnie Bressette's father Bruce George, being moved from Stoney Point to Kettle Point in 1942. Stoney Point became the army camp after the land was seized under the *War Measures Act*.



Stoney Point School (approx. 1910) The teacher is Miss Weaver from Sarnia.

*Top row, left to right:* Annie (Henry) Elijah, Mabel Johnson, John Johnson, Julia White, Frances Fanny White, Wellington Elijah.

*Bottom row, left to right:* Alma Wilde, Cecilia Wilde, Bessie Henry, Betsy White, Violet Johnson, Rosie Henry, Pearl Johnson. *Left corner:* Sarah George and Sheldon Cloud.





Clifford George and his grandmother, Hanna Bressette. The photo was taken just after he returned from overseas (1945).  
*Inset:* Clifford George.







Kenneth George, Clifford's brother who also served in the army in World War II.





Christina Melva George, Marcia Simon's mother, wearing a red jumper with the four sacred colours embroidered on the hem. She is carrying a hand drum used for singing and a staff.



AT THE GOVERNMENT HOUSE AT OTTAWA

TUESDAY, the 14th day of APRIL, 1942.

HIS EXCELLENCY

THE GOVERNOR GENERAL IN COUNCIL:

WHEREAS the Minister of National Defence states that the Quartermaster-General has reported,-

That it is necessary to provide an advanced training centre in Military District No. 1;

That a suitable site has been located comprising approximately 2240 acres on the Stony Point Indian Reserve lying between the Blue-water Highway and Lake Huron, Ontario;

That negotiations towards the acquisition of this site were entered into by the Real Estate Advisor of the Department of National Defence and the Indian Affairs Branch of the Department of Mines and Resources acting on behalf of the Indian Band on the Reserve in question;

That it was considered that the sum of \$50,000 would, in the circumstances, be fair and reasonable compensation, which sum would include the cost of moving the Indian families, their buildings, chattels, etc., off the Reserve, together with the further condition that, if, subsequent to the termination of the war, the property was not required by the Department of National Defence, negotiations would then be entered into to transfer the same back to the Indians at a reasonable price to be determined by mutual agreement;

That, pursuant to the provisions of the Indian Act, these proposals were laid before a meeting of the Indian band in question convened for that purpose, but the said band rejected the same by a vote of 59 against and 13 in favour of said proposals and it does not appear likely that the acquisition of the property in question can be effected by way of negotiation;

The Honourable  
The Minister of Mines and  
Resources.

That/



That, as the establishment of an advanced training centre in the locality in question is a matter of military expediency and as the site in question is the only one suitable for that purpose, it is in the public interest and for the efficient prosecution of the war desirable that the lands in question be acquired and to enable this to be done it is necessary that the provisions of the War Measures Act be invoked and the Quartermaster-General and the Acting Deputy Minister (Army) have recommended accordingly;

That funds will be provided in the vote for War Appropriation 1942-43;

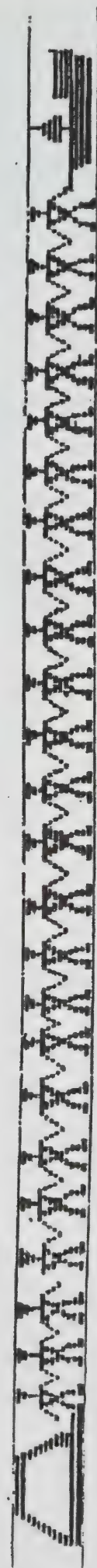
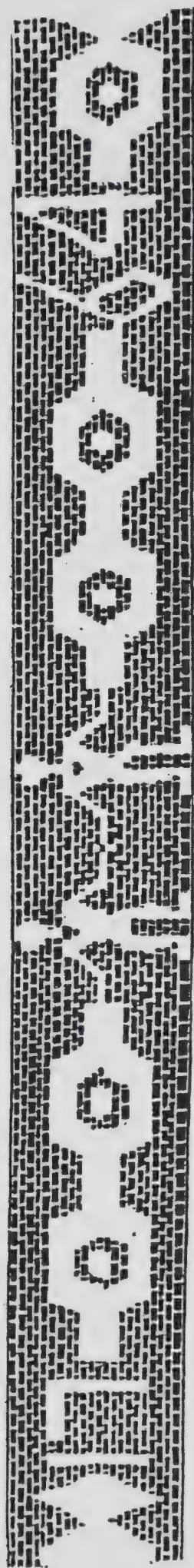
NOW, THEREFORE, His Excellency the Governor-General in Council, on the recommendation of the Minister of National Defence, and under the authority of the War Measures Act, Chapter 206 Revised Statutes of Canada 1927, and notwithstanding the provisions of any other act, law or regulation, is pleased to order and doth hereby order that an area comprising approximately 2340 acres on the Stony Point Indian Reserve lying between the Bluewater Highway and Lake Huron, Ontario, be appropriated for use by the Department of National Defence.

His Excellency in Council, on the same recommendation, is further pleased, hereby, to authorize the Real Estate Adviser, Department of National Defence, to continue negotiations with the Indian Affairs Branch of the Department of Mines and Resources respecting the compensation to be payable to the Indians on the said Reserve who, on the appropriation thereof, will be required to vacate, the maximum amount involved, including the cost of removal, not to exceed \$50,000, and, in the event of it not being possible to reach an agreement in respect of the amount of compensation to be paid, the amount so payable then to be determined by the Exchequer Court in the manner provided under the said War Measures Act.

Sgd. A.D.P. Heaney,

Clerk of the Privy Council.

# Treaty of Niagara, 1764



The two wampum belts offered by the British to consummate its alliance with the Anishnabek people.

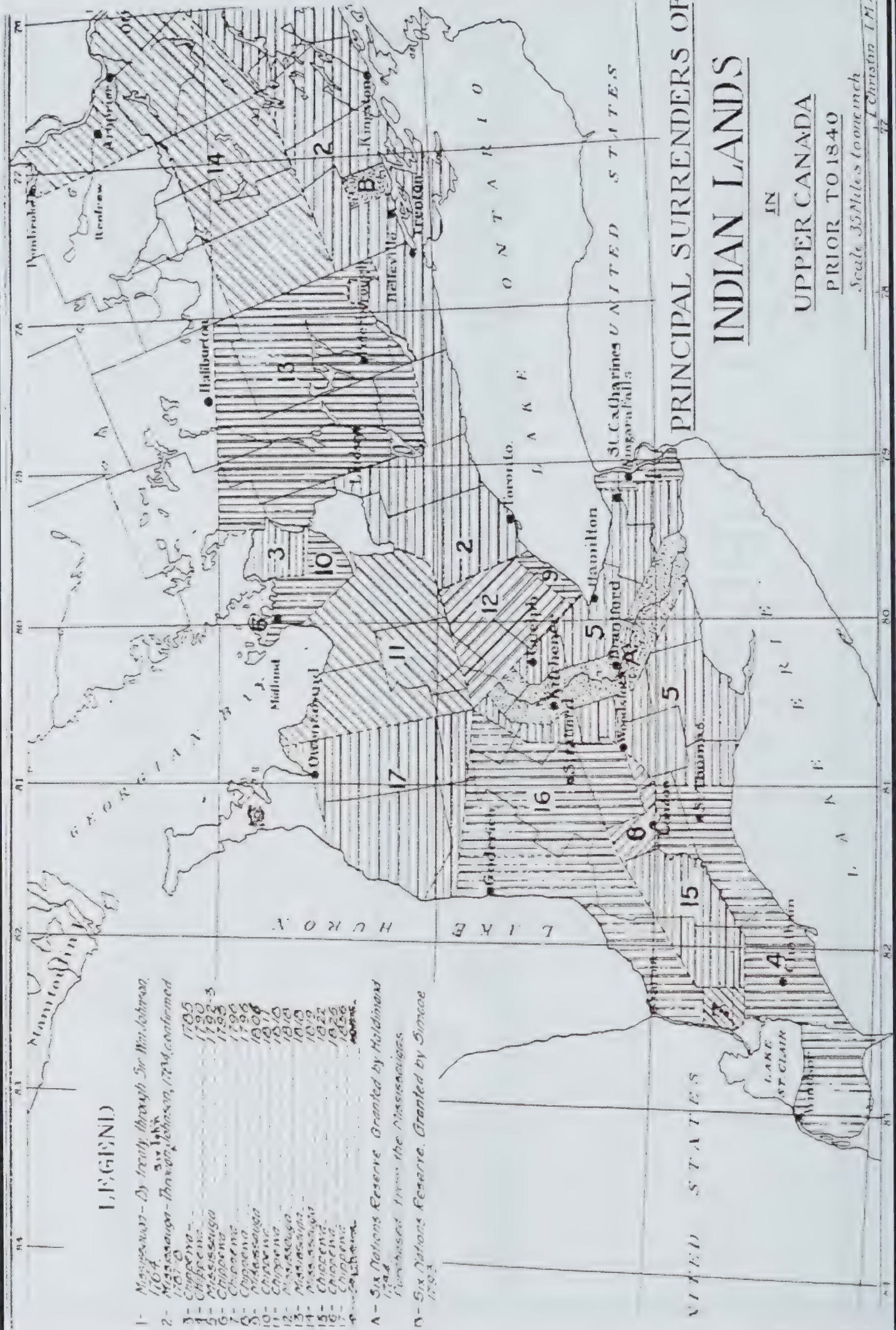


# LEGEND

- 1- Mississauga - By treaty through Sir Win. Johnson, 1764
- 2- Mississauga - Through Johnson, 1794, confirmed 1795
- 3- Chippewa - 1795
- 4- Chippewa - 1796
- 5- Mississauga - 1798
- 6- Chippewa - 1798
- 7- Chippewa - 1798
- 8- Chippewa - 1800
- 9- Chippewa - 1801
- 10- Chippewa - 1803
- 11- Mississauga - 1803
- 12- Mississauga - 1803
- 13- Mississauga - 1803
- 14- Chippewa - 1803
- 15- Chippewa - 1803
- 16- Chippewa - 1803
- 17- Chippewa - 1803

A - Six Nations Reserve. Granted by Haldimand 1784

B - Six Nations Reserve. Granted by Simcoe 1793



## PRINCIPAL SURRENDERS OF INDIAN LANDS

IN  
UPPER CANADA  
PRIOR TO 1840

Scale 35 Miles to an inch

Christie T.M.



After the conquest the British issued a Royal Proclamation in 1763. This proclamation established an “Indian Country” where aboriginal land was protected from encroachment. The land had to be voluntarily ceded to the Crown before non-aboriginal settlers could occupy it. The area historically used and occupied by the Kettle and Stony Point ancestors lay within the protected Indian Country.



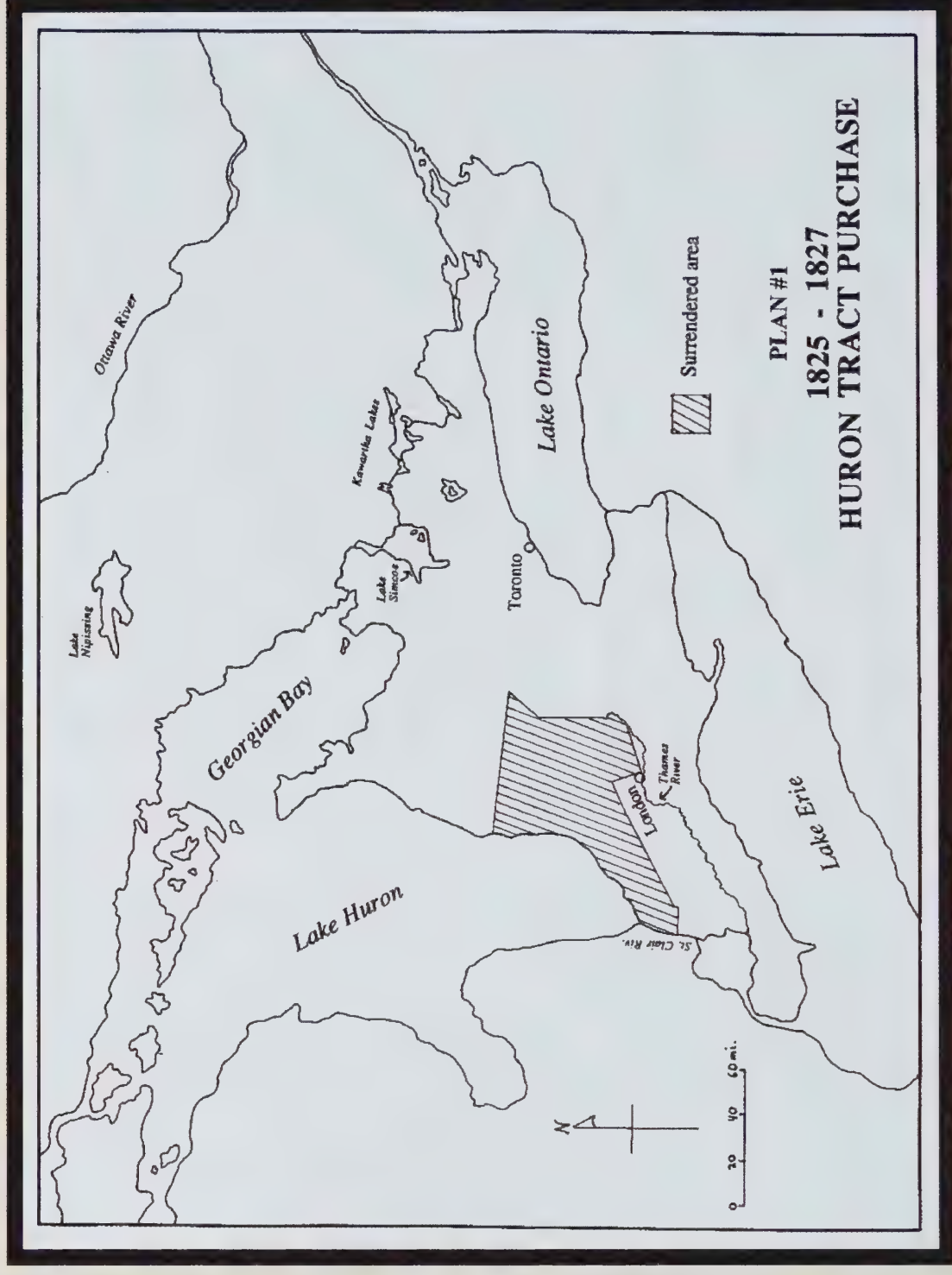
"Territorial Evolution of Canada",  
Surveys and Mapping Branch, 1969

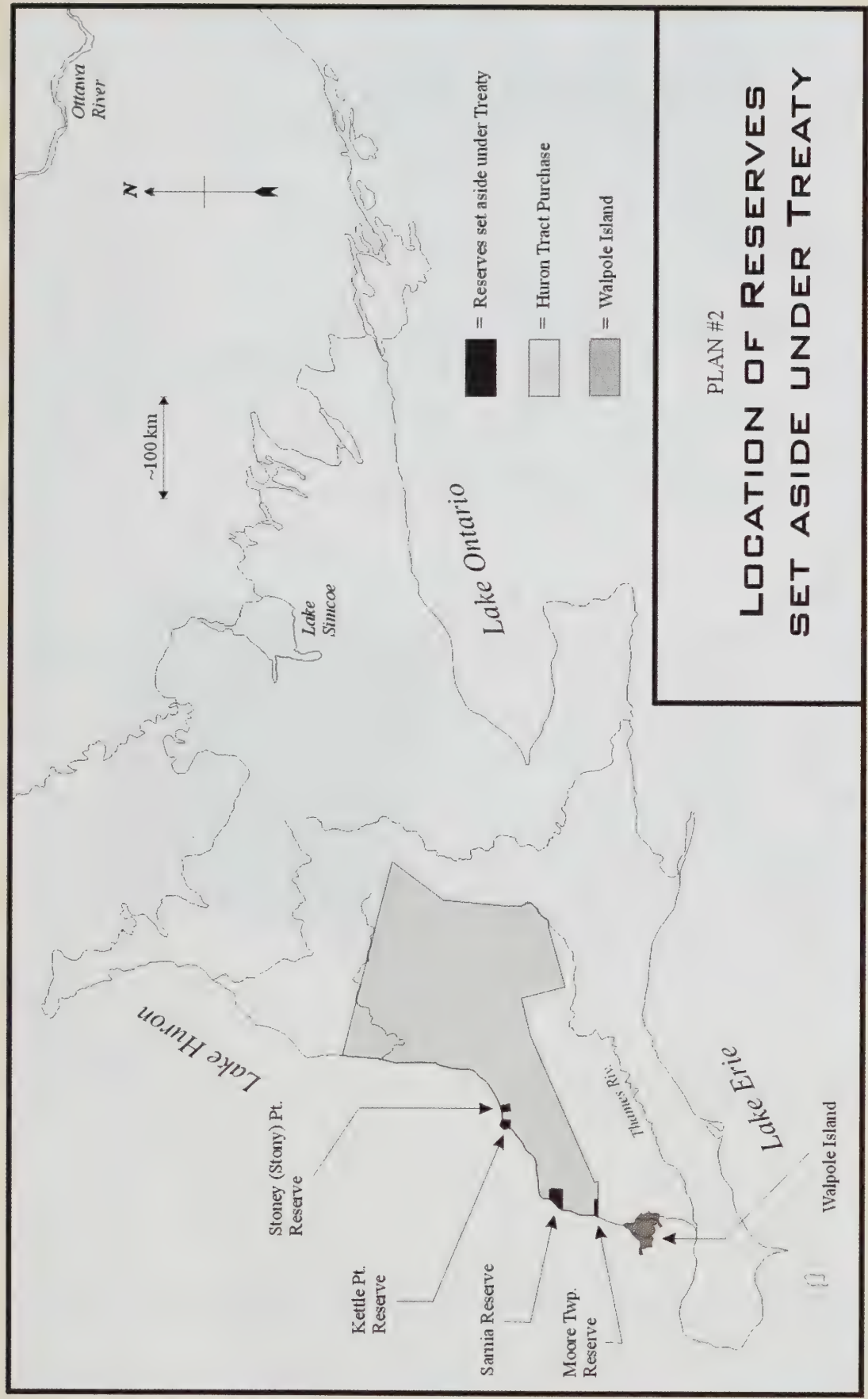
Proclamation Line



# The Surrendered Tract

18 Chippewa chiefs ceded over 2.1 million acres by the Huron Tract Treaty of 1827. They received a perpetual annuity of £1,100 (about \$4,400 or \$10 per person per year)





The Chiefs selected four tracts of land to be reserved for their exclusive use:

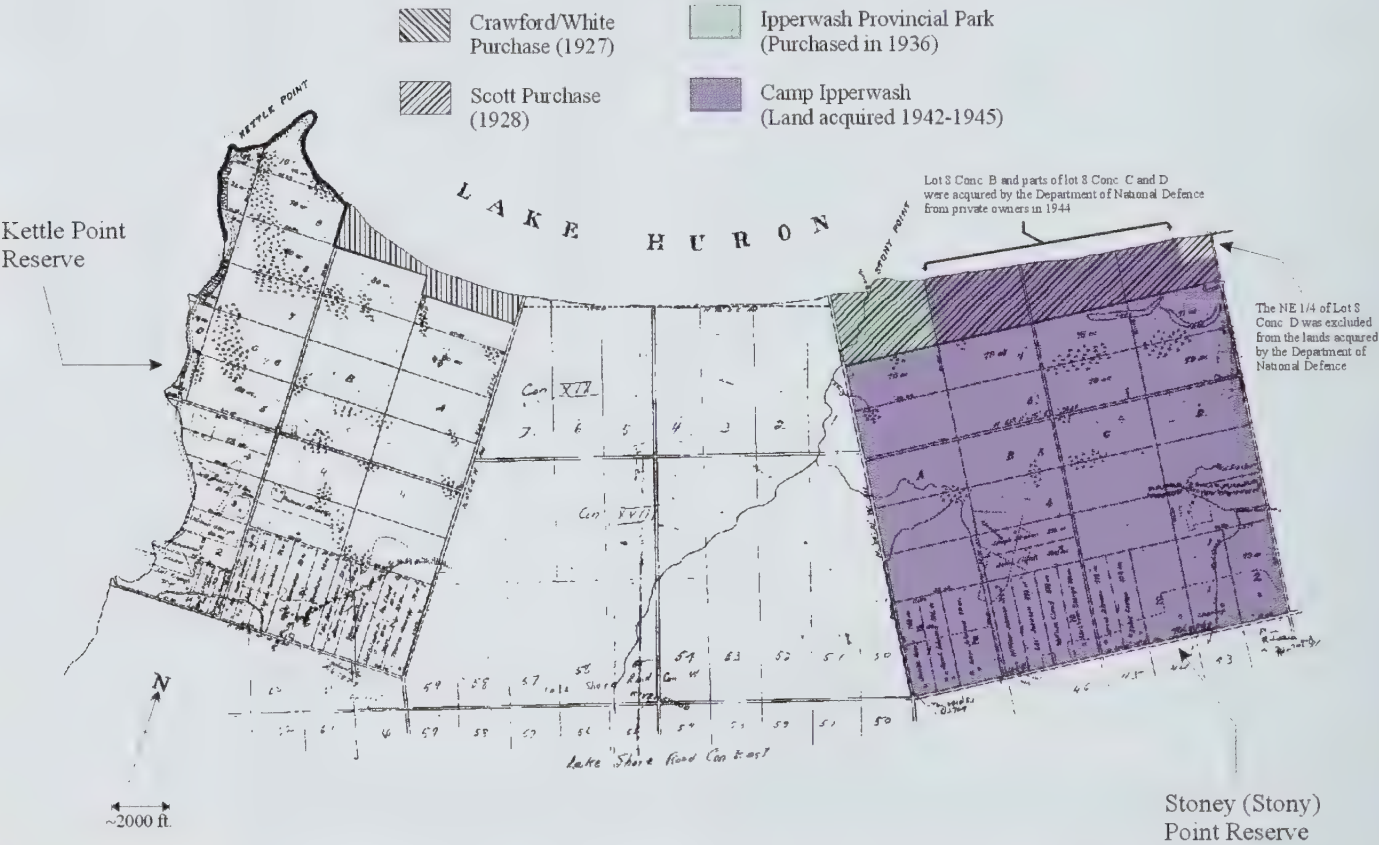
Upper Reserve on the St. Clair River (Samia)	10,280 acres
Lower Reserve on the St. Clair River (Moore Township)	2,575 acres
Mouth of the River aux Sable on Lake Huron (Stony Point)	2,650 acres
Kettle Point on Lake Huron (Kettle Point)	2,446 acres



PLAN #3 SURRENDERS FROM THE  
KETTLE AND STONEY POINT RESERVES

PLAN #3

SURRENDERS FROM THE  
KETTLE AND STONEY POINT RESERVES



Modified from W. S. Davidson's 1900 plan of survey (CLSR #T-290)

# 1927 Crawford / White Purchase FROM THE KETTLE POINT RESERVE

- In 1927 part of the beachfront of the Kettle Point Reserve was surrendered for sale. Men from both Kettle and Stony Point voted on the surrender and 83 acres were sold at \$85 per acre. This represented about 3% of the land base at Kettle Point.



Modified from W. S. Davidson's 1900 plan of survey (CLSR #T-290)

- This surrender became the subject of a law suit and land claim against Canada in the 1990s. It has not yet been resolved.



# 1928 SCOTT PURCHASE FROM THE STONEY POINT RESERVE

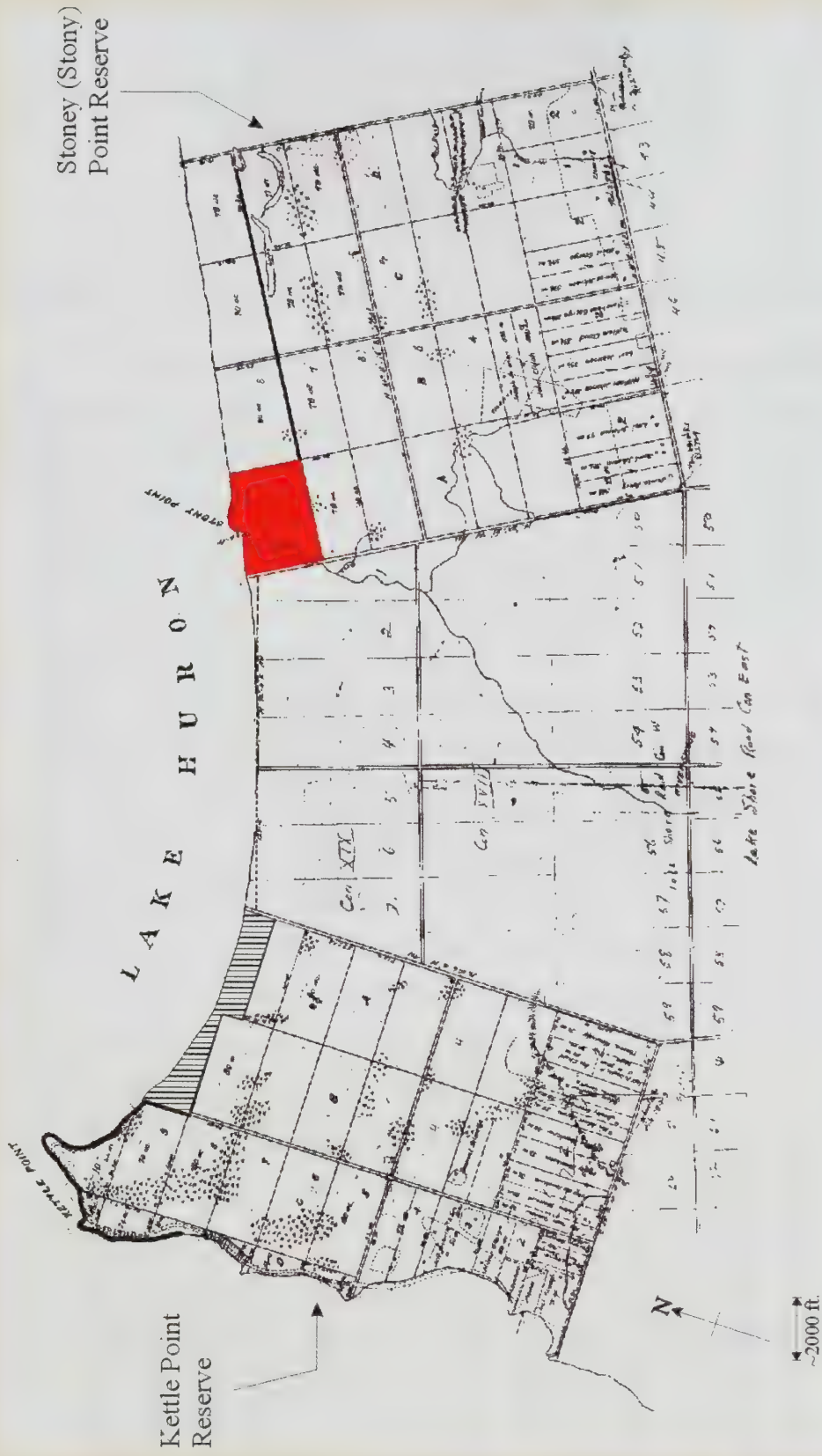
- In 1928 the entire beach-front of the Stony Point Reserve was surrendered for sale. Men from both Kettle and Stony Point voted on the surrender and 377 acres were sold at \$35 per acre. This represented about 14% of the land base at Stony Point.



Modified from W. S. Davidson's 1900 plan of survey (CLSR #T-290)

- This surrender became the subject of a land claim against Canada in 1996. It is currently being reviewed.

# AREA PURCHASED FOR IPPERWASH PROVINCIAL PARK IN 1932



Modified from W. S. Davidson's 1900 plan of survey (CLSR #T-290)

- The Province of Ontario purchased a portion of the surrendered Stony Point beach front and established Ipperwash Provincial Park in 1932.



# ACQUISITION OF CAMP IPPERWASH 1942 - 1945

- During World War II the Department of National Defence wanted Stony Point Reserve for a military training camp. They began investigating the site in February 1942.
- In April the Indian Agent tried to get a voluntary surrender. The Kettle and Stony Point Band refused.



- DND acquired the reserve under the *War Measures Act*. The appropriation was authorized by Order in Council. The military camp was named Camp Ipperwash.

## MAY 1993–JULY 1995 — OCCUPATION OF THE MILITARY RANGES AND SUBSEQUENT EVENTS

### 6.1 May 1993 — Occupation of the Ranges at CFB Ipperwash

On May 6, 1993, long-building frustration resulted in a decision by a group of Stoney Point<sup>1</sup> people to move onto a portion of the Stoney Point lands that were being used for the army camp. Chief Tom Bressette and the Kettle and Stony Point First Nation were talking to the federal government about the return of the lands, but some members of the Stoney Point group felt that little was happening. The purposes of the occupation were to reclaim the land and to get the apparently stalled negotiations moving again.

Prior to May 6, 1993, Stoney Point people had met with representatives of the Department of National Defence (DND) to inform them that people were preparing to enter the army camp. They did not say how long they intended to remain, but they did say that it would be peaceful and that they would not cause a problem for the cadets at Camp Ipperwash. According to Carl Tolsma (at the time, known as Carl George),<sup>2</sup> who saw himself as a spokesperson for the group, the representatives of DND said “no problem.” Carl Tolsma intended to step out of the picture and let Chief Bressette and the Band Council take over once the federal government was involved and a process for communication had been established.

On May 6, 1993, Carl Tolsma went to the OPP Forest Detachment and met with the Detachment Commander, Staff Sergeant John Carson, to tell him that he and his group intended to enter the army camp. Notices signed by Carl George as Chief of the “Chippewas of Stoney Point First Nation #43” and by Maynard T. George as Councillor were left with John Carson.<sup>3</sup> The notices stated, among other things:

We have come home in the name of our people, tradition and custom.

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1 Referred to by the military as the Stoney Point Group or SPG.

2 Carl George changed his name to Carl Tolsma in 1997. He will be referred to as Carl Tolsma except where a document refers to him as Carl George.

3 “Chippewas of Stoney Point First Nation #43” is the name that the occupiers of the army camp used to describe their community at the time and is not a recognized Band under the *Indian Act*.



We are not claiming that Stoney Point Reserve No. 43 in the name of only those uprooted, but also in right of the (1st) first and (2nd) second and third generation children, who's parents and grandparents have been victimized by the taking of their lands (farms) in 1942 ...

We request all outside First Nations, "to stay away from our legal take-over, that misrepresentation, or civil disobedience may not occur."

We are not hindering the elected Kettle Point Council or people from joining us "but, they do not represent us, in any way, shape or form."

Staff Sergeant John Carson wrote to his superior, the Superintendent for No. 1 District, headquartered in Chatham, reporting on his meeting with Carl Tolsma. The letter stated that "Chief George" indicated that the occupation would continue until negotiations with the federal government were concluded, that approximately twelve people would take part, and that it would be a peaceful action. Carson reported that the OPP Detachment would monitor the occupation to keep the peace where appropriate and provide traffic control if needed, and that his officers would enter the base only when invited by military officials.

Although Carl Tolsma was sometimes called Chief, he was uncomfortable with the title and identified himself as a spokesperson. He testified at the Inquiry that when he walked onto the lands, he intended to represent the interests of the small group he was with and also Kettle and Stony Point First Nation, "everyone as a whole."

On May 6, 1993, Carl Tolsma entered the army camp through the main gate to the built-up area along with fifteen to thirty other people, including Clifford George, Abraham George, Rose Manning, Maynard T. George, David George, Clayton George, Glenn George, Dudley George, Marcia Simon, Kevin Simon, Marlin Simon, Gerald George, Warren George, and Stacey George. They brought tents and an old eight-foot trailer. Once they were in the camp, they alerted the media to make it known to the public, DND, and governments that they would not be leaving the army camp and that they wanted their land returned. The people entered peacefully, without weapons or guns. No police were present, and no one requested that police go to the army camp that day.

Some but not all of those who entered the army camp on May 6 stayed overnight, taking up residence indefinitely. Those who did put their tents and trailers in three locations along the north side of the interior road that runs parallel to Highway 21, between the road running north on the west side of the grenade range and the road running north on the east side of the transition range.

The mood amongst the group that entered the camp was jubilant. People were overjoyed to be back on the land. Some later noted their satisfaction at the idea of encroaching on the military, rather than being encroached on, as had so long been the case.

Marcia Simon, the daughter of Melva George and Dan George Sr., described the older people's reaction to being on the lands:

And these old people that went in there, some of them they would say things like it was the happiest days of their lives. You could see the tears in the back of their eyes. They were so happy [because] they didn't think they would ever see that time [when they would be back on Stoney Point lands].

Ron George, the son of Sylvia George and Robert George Jr. ("Nobby"), visited the army camp once every couple of weeks or so after the occupation in 1993. At the Inquiry, he described the feelings of freedom and connection that resulted from being there:

It seemed to me like it ... felt when I was a kid, that you could finally go back in there without having to be subject to somebody else's approval and the parameters that existed by a fence. So, I felt kind of free to do that.

And again, if you think about it, from my perspective, at least for me personally, we had come from — we, I mean the people, had come from a point where you know, in 1990 Dan George finally returns, and now, we had access to it ...

So, it was like this kind of connection back with it. And I know that sounds warm and fuzzy, but that's the way it was.

The Chief and Council of the Kettle and Stony Point First Nation did not sanction the occupation of the army camp, though they continued to call for the return of the lands. In their press release following the occupation, the Chief and Council said they were satisfied that their discussions with the federal government were progressing, and expressed concern that the actions of Maynard T. George and his followers could hamper those discussions. In the press release, Chief Bressette confirmed his support for Elders such as Clifford George, who wanted to return to their homeland.



Around the time of the occupation of the military ranges, Carl Tolsma had open lines of communication with the OPP. For example, on May 11, 1993, Carl Tolsma was concerned about tension between other Band members and the Stoney Point group, and requested assistance from the OPP. As Mr. Tolsma explained at the Inquiry: “[A] lot of people didn’t like us being there ... because we were on the land.” They “said that we were on their parents’, grandparents’ property and they didn’t like the idea of us being there.” In addition, Mr. Tolsma had a good working relationship with Staff Sergeant Bouwman of the OPP Grand Bend Detachment, who would drop by at the army camp to give him advice and other assistance, “more or less just to keep the peace.”

John Carson, promoted to OPP Inspector on May 10, 1993, was appointed Incident Commander with respect to Ipperwash on approximately May 12, 1993, by Chief Superintendent Chris Coles. As Incident Commander, he was responsible for the OPP response to events involving the occupation of CFB Ipperwash. He was made Incident Commander because he had been the Detachment Commander in Forest for the previous four years and understood some of the issues and knew some of the people involved. CFB Ipperwash was within the geographical area of the Pinery Park Detachment, which was a very small detachment. Carson was to manage the issue at CFB Ipperwash with resources from both the Forest and the Pinery Park Detachments and work with both of the Detachment Commanders.

On May 18, 1993, Maynard T. George contacted the Acting Detachment Commander at the Forest Detachment and said that the “Stoney Point First Nations” people would be serving a notice on Camp Ipperwash personnel and that following that service, structures would be moved onto Camp Ipperwash property. The Acting Detachment Commander attended at the site, met with Carl Tolsma and Maynard T. George, and was provided with a copy of the notice. The notice said that no one should resist or willingly obstruct the legal seizure and repossession of the lands named in the letter. Maynard T. George said that a similar notice would be served on a Ministry of Natural Resources (MNR) employee in relation to the movement of buildings onto Ipperwash Provincial Park property.

A wire fence runs along the southern boundary of the army camp, with locked gates permitting access from the area north of Highway 21 to the army camp. On May 18, 1993, Carl Tolsma and Bert Manning cut a lock on one of the gates located at the east end of the army camp near Outer Drive. The point of entry has been described as being near the quarry. Approximately fifty people were present when the lock was cut. The gate was opened and numerous people, vehicles, and a small structure went onto base property. Clifford George described this

as walking in officially. Again they went in peacefully, without weapons: their only goal was to occupy their own lands.

Over the summer of 1993, a number of families entered the army camp including the Manning family, Glenn George and his family, the Cloud family, Clifford George, and Marcia Simon. Some people stayed, while others came in for a weekend and left.

Dudley George also moved to the army camp. In 1993, about a month after the occupation began, Dudley George was given a trailer that had been donated to the Council for whomever might need it. Dudley George treasured his new home, telling Clifford George it was the first home he had ever owned. He moved in full-time. Dudley felt strongly about the land: he had spent his life living in Sarnia, Kettle Point, Forest, and even Guelph, but he knew Stoney Point was where he belonged.

On May 19, 1993, Inspector John Carson's assignment as Incident Commander was confirmed. At that time, the military would have preferred it if the OPP would simply go into the army camp and arrest the occupiers for trespass. The OPP felt that this was not the appropriate approach: instead, they wanted the military to act pursuant to their responsibility for the security of the military base under the Defence Controlled Access Regulations (DCARS), which provide for the removal of trespassers. The OPP would not go into the army camp, but would receive arrested persons at the main gate and let the courts determine whether they had trespassed.

Occupations were normally handled through the use of court injunctions. The OPP's preferred approach was to wait for an injunction to be obtained before taking any overt action to remove people from an occupied territory. The OPP would not seek the injunction: the owner or landlord of the property would be required to apply to the court for the appropriate injunction. The OPP would then do as directed by the court.

Around this time in May of 1993, John Carson did some research regarding the ownership of CFB Ipperwash. He reviewed copies of documentation from 1942 regarding the appropriation of the property and quickly understood that the Stoney Point people's expectation that the property would be returned to them was very reasonable. The concept of "colour of right" was discussed internally by the OPP and between the OPP and military officials. "Colour of right" can afford a defence to people who might otherwise be trespassing but have an honest belief that they are entitled to property. John Carson felt that there was a lot of room for debate on the question of whether the Stoney Point people were trespassing.

Detective Sergeant Mark Wright first became involved on May 20, 1993, in the situation at Ipperwash when he called the Forest Detachment and offered to work on the criminal investigation of any occurrences in the Ipperwash area.



On May 21, 1993, Inspector Carson convened a planning meeting at the OPP District Headquarters in London to develop an operational plan for the occupation of CFB Ipperwash. Under the heading “OPP Action,” the operational plan stated:

We are aware that this is a very delicate and sensitive issue that can only be resolved in the political arena. We are sensitive to both the rights of the First Nation People and the Department of National Defence and that both believe they have a lawful right to the land. Our personnel involved in policing the event are fully conscious of the sensitivity of the issue and the rights of all parties. We will essentially act in a facilitating role, ensuring that all parties are permitted to execute their respective rights ...

A revised operational plan of June 2, 1993, dealt with the situation of an injunction sought by the DND. In part it stated:

If the injunction orders the Ontario Provincial Police to remove the occupiers, we will attempt to negotiate a peaceful resolution prior to the expiration of the time limit subject to the directions contained in the injunction.

The occupiers will be instructed to remove themselves and their property (tents, trailers and other structures). On failure to do so, the occupiers will be arrested and charged with violation of the injunction.

The OPP operational plan for Camp Ipperwash provided that, in accordance with OPP policy, the military would enforce the *Criminal Code* and provincial traffic statutes and regulations, and the OPP would deal with offences of a serious nature such as murder, manslaughter, or any serious sexual assault. The military would report such offences to the nearest detachment. Under the original and revised operational plans, the OPP were constrained as they could not negotiate with respect to land issues; however, they were prepared to negotiate if any criminal issues arose. However, the operational plans developed in May and early June of 1993 were never implemented because no injunctions were ever obtained by DND for the removal of the Stoney Point people, and no serious offences were reported.

During the period when the Stoney Point people were moving onto the Stoney Point lands at the army camp, the possibility of a similar situation at Ipperwash Provincial Park was raised. During the afternoon of May 18, 1993, Scott Ewart, a bailiff, served a notice on an MNR student summer employee at Ipperwash

Provincial Park. The notice requested that the recipients not resist or willingly obstruct the legal seizure and repossession of the identified lands. It said that structures would be moved into Ipperwash Provincial Park. The notice was signed by Carl George as Chief, and by Councillors Rosalie Manning, Marlene Cloud, Janet Cloud, Gordon Cloud, and Clifford George. The OPP advised Superintendent Les Kobayashi of Pinery and Ipperwash Provincial Parks of the possibility of an occupation of Ipperwash Provincial Park.

A letter dated May 19, 1993, and signed on May 20, 1993, by Carl Otto George as Chief, and by Maynard T. George, Rosalie Manning, Janet Cloud, Clifford George, and Marlene Cloud as Councillors, proposed a co-management agreement for Ipperwash Provincial Park for the 1993 summer program. The Stoney Point group claimed to be the owners of the property on behalf of Stoney Point First Nation Reserve Number 43. The proposal contained in the document was as follows:

1. a structure of approximately 6 metres square or 20 feet for an information booth on Native Title and History;
2. equitable division of the 266 campground sites for 50/50 entitlement, utilizing regular Ipperwash documentation for the 1993 season;
3. uses of defined areas for historical plaques, commemorating the up-rooted families and veterans who died, while waiting to return home;
4. a ceremony on Remembrance Day, in right of the living veterans and landowners at Stoney Point, with MNR officials and other veterans.

The letter states that “[s]ome of the lands within Ipperwash Park are sacred burial grounds,” and “these areas must be recorded and documented by our First Nations structure.”

On May 19, 1993, Inspector John Carson spoke with Ron Baldwin, District Manager of the MNR Aylmer office, about potential activities at the park.

On May 26, 1993, Chief Tom Bressette met with an MNR representative, Terry Humberstone, and they agreed that Maynard T. George should pursue the claim with respect to Ipperwash Provincial Park with the federal government. Chief Bressette told the MNR that the Kettle and Stony Point First Nation did not recognize Stoney Point as an official First Nation nor did they condone the actions of Maynard T. George and his group. Chief Bressette expressed his frustration with the negotiations with the DND, who in his opinion were not negotiating in good faith.



During May and June, the occupiers served more notices with respect to the army camp. For example, a Notice of Trespass dated June 9, 1993, signed by Carl George as Interim Chief, Stoney Point First Nation Number 43, required the military to vacate within thirty days.

In June 1993, the Chief and Council of Kettle and Stony Point First Nation reported that DND was prepared to enter into “official negotiations” with the Chippewas of Kettle and Stony Point concerning Stony Point/Ipperwash and emphasized that the “interests of the people [would] be addressed through the elected Chief and Council of the Chippewas of Kettle and Stony Point.” The individuals camping on Stoney Point were encouraged to attend a meeting with DND and to bring a copy of the location ticket in which they were claiming an interest.

Over the summer of 1993, discussions took place between representatives of Kettle and Stony Point First Nation and those of the Stoney Point group to try to work out their relationship. Meetings were held with representatives of both groups and in Toronto with Chief Gordon Peters of the Chiefs of Ontario. As well, efforts were made to retain experts jointly to review the land claim.

In June 1993, Maynard T. George repeated the information regarding the burial ground contained in the May 19 letter to Park Superintendent Les Kobayashi during a meeting. In June 1993 MNR communicated its position to Maynard T. George that “through third party purchase the Ontario Crown is in lawful possession of those lands comprising Ipperwash Provincial Park.” The MNR did not take a position regarding the claim that there was a burial ground in the park.

By the end of June 1993, it was clear that the military had decided not to seek an injunction. The aim of the DND was “to arrive at a long-term peaceful solution to the difficulties presented by the illegal occupation of Camp Ipperwash by the SPG [Stoney Point group].” The DND thought that the assistance of the OPP would likely be required as “the appearance presented by the Ontario Provincial Police would be less confrontational than unilateral action on the part of the [f]ederal authorities.” The OPP’s position remained the same: they would only take possession of persons arrested by the military at the main gate. As a police agency, the OPP remained neutral.

## 6.2 Summer 1993 at Stoney Point

Initially the occupiers camped on one side of the steel bridge along Highway 21, in an area east of the rifle ranges. People then moved into the ranges area within a couple of weeks. By early July there were campsites running along the inside of the road running parallel to Highway 21 from the area on the east side of the camp near Outer Drive, to an area just to the east of the built-up area of the army

camp. They cleaned up brush and set up camps and tents. Trailers and a school bus were later moved in. Some, like Glenn George, slept in vehicles initially, and then built more permanent dwellings.

The occupiers received material and other forms of assistance from a variety of sources. Friends and relatives visited to show their support and to bring supplies to those who were living there. Supporters also came from other First Nations. Various groups, such as Christian coalitions, the Mennonites, and the Canadian Auto Workers, became aware of the occupation and arrived to demonstrate their support and provide assistance.

Within a month of the occupation, a sacred fire had been lit. It burned from May until the end of October, twenty-four hours a day, seven days a week. First Nations witnesses testified that when tending the fire, a fire-keeper is expected to have been free of drugs and alcohol for at least three days in order to have a clean mind and clean spirit. Kevin Simon, Marlin Simon, David George, Dudley George, Joe George, Warren George, and Glenn George served as fire-keepers. People gathered at the fire to share stories, knowledge, documents, and memories about the area and the occupation.

The Stoney Point people planted a peace tree in the army camp. A ceremony was held to “bury the hatchet.” The ceremony signified that no weapons would be used in the reclaiming of the land and that it would be peaceful. As Kevin Simon explained:

We were there just to raise awareness of what was happening and through that ceremony, we were able to show our intent to ... each other and to outsiders that we ... didn't mean nobody harm. We were there in a peaceful manner.

To its participants, the ceremony represented a sacred commitment to pursue the return of the lands in a peaceful way.

By the end of the summer 1993, the occupiers had built more permanent structures on the army camp lands. The largest building, located to the west of the road running north on the west side of grenade range, was initially a church with a steeple, intended as a place of refuge, but the steeple was later removed. The building was used mostly as a meeting place and referred to as the “Argument Hall.” Roderick George (“Judas”) testified: “It’s where everybody usually ended up in an argument.” Meetings were held at the Argument Hall for a variety of reasons: to discuss new developments or announcements by the government, and to celebrate birthdays.



### 6.3 Marcia Simon's Teaching about the Past and the Traditional Sense of a Warrior Society

At the army camp, Marcia Simon and others, including Abraham George (“Hamster”) and Melva George, undertook to teach the traditions, language, and history of the Anishnabek people, much of which had not been taught to the young people. The classes began in 1993 and continued into 1995.

A society of young people was formed among the occupiers in the summer of 1993. It developed in part out of Marcia Simon's lessons and was based on fulfilling the obligations of a warrior to the community. She had taught them that a warrior's primary concern is not with himself. He needs to do whatever needs to be done in the community. A warrior's obligations are to protect the land, the people, the women, the children, and the Elders; the past (ancestors), the present (people living in the community now), and the future (future generations).<sup>4</sup>

David George, Clayton George, Marlin Simon, Kevin Simon, Glenn George, and Dale Plain George were amongst those who participated — different people attended the meetings and classes, on and off. Anyone who was Anishnawbe from Stoney Point could be a member. Women were also involved. Initially it was going to be called a “Warrior Society,” but because the media seemed to believe that people in warrior societies are masked and armed, a different name was discussed. Abraham George gave the society the name “Etwaagnikejig,” which he said meant “nation builders.” Kevin Simon understood his duties as a member of the nation-builders' group to be as follows:

Duties of being part of the Etwaagnikejig were to basically help one another, help out [E]lders, cutting firewood. If we were lucky hunting, we'd share some of the meat and fishing, [and] so on.

And it also included duties of learning the history and the language and the culture that we were being taught at that sacred fire. And to act in the manner of someone that learned and knew of those things, and be proud of who we were, where we were.

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4 Although not one of the members who attended the sessions with Marcia Simon, Elwood Tracy George testified as to his understanding of what it means to be a warrior, which is consistent with that passed on by Marcia Simon. Similarly, Ron George's understanding of a warrior is as a protector of lands, and as people who work for the good of all members of the community. Carolyn George testified that to her, most Natives are warriors and that living up to one's responsibilities determines whether or not one is a warrior. Those responsibilities are: protecting the lands; returning the lands; protecting the women and children; public speaking for the good of the people; and ensuring there is food for the community.

We weren't trespassers or squatters or everything else that they were calling us in the paper at the time. It was a — I guess a source of pride and something for future generations to ... to be proud of too.

Consistent with the obligations of a warrior, the group had meetings to discuss the community's needs, collected firewood and had a woodcutting bee, organized birthday parties, conducted patrols so they would be present as witnesses to anything that might happen, assisted the Elders with winterization, and helped with fundraising for their leadership (Glenn George and Maynard T. George) so that they could travel. The group was not militant.

From May until early August 1993, Gerald George and several others acted as security, walking around the perimeter of the camp along Highway 21. If anything happened, they were supposed to tell the Elders, Carl Tolsma, Robert George Jr., or Maynard T. George. They understood their role as one consistent with that of a warrior or peacekeeper.

## **6.4 Interactions Between the Occupiers and the Military**

Although there were some incidents and tension between the occupiers and the military, the period following the occupation of the ranges was basically peaceful. No formal discussions took place between the Stoney Point people and military personnel, but some people felt that there was an understanding that the Stoney Point people would stay in the ranges area and not go into the built-up area and that the military people would not bother the people who were camping in the rifle ranges.

At the Inquiry, the occupiers described some harassment by the military. The military patrols were loud and annoying, with vehicles driving by at all hours of the night. Cadets yelled obscenities at the occupiers and called them "wahoos." Military personnel chanted that the occupiers "forgot to pay taxes." One of the occupiers described their relationship with the military between May 1993 and July 1995 as "just kind of one of taunting each other. Kind of like neighbours bickering at each other all the time."

## **6.5 July 1993 — Toll Collection Incident**

In mid-July, members of the Stoney Point group attempted to charge a fee for entry to the military beach on Lake Huron. They stopped traffic on Matheson Drive at the gate to the military beach and told people that, for \$5, they could use all of Stoney Point Beach. Glenn George characterized the action as part of the group's efforts to raise funds for legal fees and other things.



Inspector John Carson testified that he encouraged Maynard T. George and Glenn George to avoid confrontation with police in relation to this incident. Glenn George testified that he did not recall having such a conversation with John Carson. John Carson also testified that he advised Maynard T. George that the police would have to make an arrest if the road was obstructed.

Three individuals, including Clifford George, were arrested in connection with this incident. Clifford George stopped a car and, before even speaking to the occupants, was put into a cruiser. At the OPP Forest Detachment, Clifford George and the two others were told they would be released if they promised not to go within two miles of the army camp. Because they would not agree, they were taken to the Sarnia jail, and later released on the condition that they stay away from Ipperwash Provincial Park and Matheson Drive. No condition was imposed in relation to Camp Ipperwash.

## **6.6 August 1993 — Incident with Kevin Simon's Dwelling and Possessions**

Kevin Simon, Marcia Simon's son, moved to the army camp in the summer of 1993. At the time, he was sixteen years old. He lived in a building on the edge of the rifle range. Kevin Simon collected some unused refrigerators and stoves from an apartment building in London where he was working and stored them inside the building. In August 1993, members of the military came early one morning before it was light to evict him, removing his personal belongings from the building, including the items that he had collected. The items were put on a truck and taken away.

The military said that they were moving property from a range building when confronted by Kevin Simon and several other occupiers. According to the military, a pickup truck was parked in front of the military vehicle and another vehicle pushed the military vehicle into the pickup truck.

Later the same day, the building burned down. The occupiers and the military blamed each other for burning the building.

An investigator was assigned to the incident but no charges were ever laid. The military refused to return the property from inside the building pending the results of its arson investigation. Inspector John Carson thought that the seizure of the property had nothing to do with the arson investigation and that it was wrong for the military to use the excuse that they were holding the property because of the arson investigation. He thought the military should have returned the property. Around this time there was tension between the OPP and the military: the OPP felt that the military should do more regarding these altercations, and the military were annoyed because they felt that the OPP were not doing enough.

The final graduation ceremonies for cadets were to be held on Saturday, August 21, 1993. Members of the Stoney Point group planned to attend as a form of protest and invited other First Nations to come. Carolyn George and other women dressed in traditional clothing. Some people carried banners that said: “Welcome to Stoney Point First Nation.” During the graduation ceremonies, the burned wood from Kevin Simon’s building was dumped on the parade square.

## 6.7 August 23, 1993 — Helicopter Incident

Military helicopters frequently flew over the army camp at night. The occupiers would illuminate them with hand-held spotlights. On August 23, 1993, at 11:00 p.m., Inspector John Carson was advised that two OPP officers had observed a military helicopter flying overhead and heard what they believed to be rifle fire from the ranges area. Subsequently, at approximately midnight, John Carson was advised by the military that a military helicopter had taken a bullet in the tail section. During the night, Inspector Carson directed the base to be secured as a crime scene.

At 1:45 a.m. Inspector Carson went to Robert George Jr.’s residence at Kettle Point. Robert George Jr. (“Nobby”) is the father of Ron George. John Carson requested assistance from Robert George Jr. in communicating to the occupiers that the OPP would be securing the base pending a search. Mr. George thought Carl Tolsma was at the base and would be able to assist.

When Carl Tolsma had been located, John Carson explained to him that vehicles would be checked if they wished to leave or the drivers would be considered to be obstructing the investigation. John Carson told Carl Tolsma that the OPP were in the process of obtaining a search warrant for the army camp. John Carson felt that Carl Tolsma understood what the OPP had to do and that he was going to do his part to communicate to the occupiers what the police would be doing in the hours ahead.

Inspector Carson testified that he had no concerns about entering the army camp during the night on August 24, 1993. Although he was aware that the occupiers were hunters and had access to weapons, he did not believe that anyone would use a weapon against a police officer. After the incident involving the alleged shooting at the helicopter, there was no perceived threat to Ipperwash Provincial Park staff or campers.

Prior to conducting the search, Detective Sergeant Mark Wright and an OPP Inspector met with Chief Carl Tolsma and advised him of the fact that they were about to obtain a *Criminal Code* search warrant and that they were going to enter onto the property and search the area of CFB Ipperwash. The purpose of the advisement was to allow Carl Tolsma time to tell the residents what was going to happen.



The search began at approximately 11:35 a.m. on August 24, 1993, and lasted until approximately 8:30 p.m. The search included the part of the base occupied by the First Nations individuals in the non-built-up area, the eastern part of the base, and then northward, well into the base in the rifle ranges. During the day, additional Emergency Response Teams (ERT) arrived and the search extended to the dunes at Lake Huron on the northern part of the base.

The search was perceived by the occupiers as intrusive and aggressive. David George testified that the police tore his camp apart; threw his dishes all over the place; threw his guitar to the ground; and took items from his camp, including barbed wire, duct tape, twine wire, a pellet gun, and a slingshot. Carolyn George said that the police came “in one big wave right across the whole area,” and ripped open trailers if no one was there to let them in.

Detective Sergeant Wright prepared a case report noting that the following were found: “Several high-voltage hand-held spotlights, one (1) pellet pistol, one (1) flare gun, Military trip wire, several boxes, several rounds of ammunition of various calibre.”

A fired projectile was taken from the helicopter and submitted to the Centre of Forensic Sciences for examination. The examination indicated that the projectile may have been fired from a .270-.30 calibre centre-fire rifle or perhaps a .25 calibre handgun.

Inspector John Carson recommended to the military that the “Forward Looking Infrared Technology” (FLIR) helicopter mission over the army camp cease. FLIR is camera technology that senses and captures images based on the emission of heat. John Carson testified that he believes that the military acted on his recommendation that the helicopter flights stop.

After these incidents, the balance of 1993 was relatively quiet. A Ministry of the Solicitor General and Correctional Services (MSGCS) Briefing Note dated September 24, 1993, states, in part: “Considering the potential for confrontation, conflict between the members of the military, the Natives and the OPP has been minimal.” After referring to the helicopter incident and search, the Briefing Note ends with the statement: “The situation has reverted to the status quo prior to the shooting incident.”

## **6.8 September 1993 — March to Ottawa**

In September 1993, Stoney Point people organized a march to Ottawa to bring attention to the issue of the return of the army camp. A group of approximately fifty to sixty people walked to Ottawa to try to meet with the Prime Minister. They took a petition signed by a substantial number of people. They passed

through towns and reserves along the way to raise awareness among both non-Aboriginal and Aboriginal people. David George described the walk in his testimony at the Inquiry:

A: It was a long walk and it was tough, man, it was real tough.

Q: Did you walk all the way from Stony Point [sic] to Ottawa yourself?

A: Not all the way. I think there was a couple — maybe two or three — days that I couldn't walk at all. There was a lot of people. Almost everybody had days like that where they couldn't walk because of great big blisters on your heel like that, or it feels like there's [a] great big nail coming up through your foot. It's like we were walking anywheres between twenty-five to fifty kilometres a day and this was everybody. It wasn't just three people it was the whole people. Everybody was walking.

Q: And what was the message that you were carrying to Ottawa?

A: We want our land back. We want the army out of there.

At the end of their long journey, no federal official, including Prime Minister Kim Campbell, would meet with them.

While the protest walk to Ottawa was taking place, Dudley George, one of the fire-keepers, was the only one who stayed behind to tend the fire.

## **6.9 Winter 1993–1994 at Stoney Point**

On December 8, 1993, there was a meeting between Stoney Point Councillors, Elders, and residents, and two military representatives at the Forest Golf and Country Club. At the meeting, the Stoney Point people again raised the issue of a burial ground in Ipperwash Provincial Park, asking for “an investigation as to who is responsible for safeguarding the cemetery in the Provincial Park.”

The Aboriginal people who resided at the army camp in 1993, 1994, and 1995 endured difficult conditions. There was no electricity, running water, or facilities of any kind. During the winter of 1993 to 1994, Clifford George, at the age of 73, remained on the army camp in a small shack. Dudley George lived in his trailer. Kevin Simon lived in a small shack that he had built among the trees on the west side of the rifle ranges. Although David George, Joe George, Glenn George, Warren George, Kevin Simon, Marlin Simon, Clayton George, and Stacey George spent time there over the winter, Clifford George and Dudley George were the only people to reside there permanently for the winter.



## 6.10 Efforts for the Return of the Army Camp — Announced Return in 1994

In fall 1993, Chief Tom Bressette met with Jean Chrétien who was campaigning in the North Lambton area during the federal election campaign. Ovide Mercredi, the National Chief of the Assembly of First Nations, was staying at the Holiday Inn in Point Edward and ran into Jean Chrétien there. Chief Mercredi called Chief Bressette and asked him if he could come to Sarnia very quickly because he had managed to arrange a meeting with Mr. Chrétien. Chief Mercredi told Chief Bressette that Mr. Chrétien was campaigning to be the next Prime Minister and it might be worth his while to come and discuss the land claim issue. Chief Bressette drove to Sarnia and met with Mr. Mercredi and Mr. Chrétien.

When Chief Bressette met Mr. Chrétien in 1993, he asked him, “Mr. Chrétien, when you were Minister of Indian Affairs, you gave a commitment and you failed to live up to it. If you are elected to be the Prime Minister of Canada, what will you do with our land? We’re asking now again. What’s your position on this?” Mr. Chrétien said, “Look, if I’m elected as the Prime Minister, I’ll tell you yes or I’ll tell you no. You have my word on that. I will live up to the word that I gave.”

In February 1994, the DND finally announced that it would return the CFB Ipperwash lands to Indian Affairs. On February 22, 1994, Chief Bressette received a telephone call from the DND informing him that Camp Ipperwash would be closed due to budget restraints and that the land would subsequently be returned to the First Nation. Chief Bressette sent an announcement to all members of the Kettle and Stony Point First Nation, which read in part as follows:

This day will be celebrated as a landmark victory for all members of the Kettle and Stoney Point first Nation ... [f]or all those who fought for the return of the land since 1942, and for our generations yet to come. We have persevered and we have won!

As your duly elected representatives we take this opportunity to announce to you, one and all, young and old, that one day soon, these ancestral homelands reserved for us by our forefathers and foremothers, will again be re-united.

There are still many outstanding issues that have yet to be resolved. We cannot let these issues overshadow what has happened here tonight. These issues, including compensation for loss of economic use of the land, the clean-up of the land, and the claims by locatees or location-ticket holders will all be addressed in due time.

But the land was not returned. In March 2005, the First Nation was still negotiating with the federal government to get the land back.

### **6.11 March 1994 — Tribute to Clifford George and Dudley George**

In March 1994, a ceremony was held to honour Clifford George and Dudley George as nation builders. Marcia Simon and other Stoney Point people wanted to recognize the hardy individuals who had stayed at the army camp over the record-setting cold winter in such difficult conditions. They planned a feast and called it “Surviving the first winter back in Stoney Point: A tribute to our Stoney Point Residents.” Clifford George’s and Dudley George’s birthdays were around March 17. Tributes were prepared in honour of them for their birthdays and as nation builders. The tribute to Dudley George said, in part:

A tribute to Dudley, born March 17th, 1957. On March 17, 1957 a little brown baby boy, the eighth “Nagdoonsag” was born in Sarnia to Reginald Ransford George Sr. and Genevieve Pauline Rogers George.

He was given the name Anthony O’Brien George by mother Genevieve who thought an Irish name would be appropriate.

Uncle Nug and Aunt Jenny had already had Karen Gail, Michael Patrick — deceased in 1949, Reginald Jr., Carolyn Joyce “Cully”, Maynard Donald “Sambo”, Perry Neil Watson “Pierre”, and Joan Marie “Hoss”. Later they had David Lorne “Peter”, Pamela Rose “Mouser”, and if that weren’t enough, they adopted Lavern “Razz” to complete their family ...

In May 1993, Dudley’s homeland was opened to him here in Stoney Point — finally some roots, finally a community, and finally a home. Now all he needs is a “kwe” to produce many little “Dadliinsag”, some little Duds and Dudettes ...

And in closing, even though we may not always be serious, Dudley, we do want to let you know that we give thanks to Gzhe-mnidoo for you, for making it through. Dudley, from your cousins, aunts, uncles, brothers, sisters, all your relations — for your dedication and perseverance for hanging in there as a Stoney Pointer, we say “gchi-miigwech”. May you continue to work as a Etwaagnikejig — a Nation Builder for Stoney Point. Gchi-miigwech miinwaa Mno-dbishkaa Giizhgaad. Thank you and Happy Birthday!



Dudley George was a joking, happy-go-lucky kind of guy. He had been gifted with an infectious good nature and a joking personality. He had a tremendous sense of humour and a very outgoing personality. Dudley's good friend Marcia Simon was very fond of him:

He — in that trailer on the ranges, he had the kind of personality that made one feel good to be around him. My spirits would always be lifted when I would spend a little time with him. And he liked to tell jokes and it was always a light-hearted, outgoing nature that he portrayed ...

He responded to most any situation with laughter and playfulness. Dudley's sister, Carolyn George, described him as a person that could always make you feel better by making you laugh: "If there was something really serious that — otherwise everybody would be, like, bawling their eyes out, he'd come in and say something just to make you laugh to get the mood lighter and just generally make you feel better."

## **6.12 Summer 1994 — OPP Policy and Training**

Over the spring and summer of 1994 the OPP directed and trained its officers to meet a policy developed for handling occurrences at CFB Ipperwash and in the West Ipperwash Beach area. The stated intent of the policy was to eliminate any confusion as to what the OPP response would be when called by the military to occurrences on the base. In May 1994, Staff Sergeant Wade Lacroix issued a memorandum to all area officers stating the following with respect to the neutrality of the OPP:

It is imperative that the Ontario Provincial Police be seen by all parties as neutral in this ongoing land dispute. Accordingly, it should not be the practice of officers to take coffee breaks and other extended visits at the military base ... In the event of a MAJOR OCCURRENCE such as the Attempted Murder of the military helicopter crew last summer, the ability of investigators to work effectively is dependent upon all involved parties recognizing the Ontario Provincial Police as a neutral law enforcement agency.

Detective Sergeant Wright also issued a memorandum "intended to hopefully clear some of the confusion" surrounding the OPP's position "with respect to policing in the area where the cottages are located on Ipperwash beach,"

following a meeting between OPP representatives and legal counsel and representatives of the West Ipperwash Cottage Owners Association. The Association was concerned about the policing they could expect to receive from the OPP “when they called for police to deal with [N]atives ‘harassing’ them, their families and their property.” Detective Sergeant Wright wrote:

2. The Regional Crown and our Legal Branch have explained that because of the impending legal battle over final ownership of the land [at West Ipperwash Beach] the natives now enjoy what is called “COLOUR OF RIGHT”.

3. As a result, a trespassing charge pursuant to the Provincial Offences Act would, in all likelihood, not result in conviction if brought to court.

4. Accordingly, we have been instructed NOT TO LAY TRESPASS TO PROPERTY CHARGES PURSUANT TO THE P.O.A. with respect to incidents involving natives on the front, side and backyard areas of homes on the beach.

The memorandum then goes on to outline charges that might be considered. It states, among other things: “Remember, we are a neutral entity. We will take enforcement action against ANYONE who breaks the law, regardless of race.”

OPP training material specific to the Ipperwash situation contains a map noting the West Ipperwash Beach area as property “subject of a land claim by the Kettle and Stony Point Band.” In relation to the army camp, the map notes: “[T]he military camp will be returned to native ownership, but negotiations have been slow.” The training material then sets out a variety of potential criminal and other charges that might apply, including the facts that needed to be proved, and information as to arrests and release. Mandatory training took place in June of 1994.

### **6.13 1994 Creation of Operation Maple by the Military and the Arrival of Captain Howse**

At some point in 1994 the military created Operation Maple. Captain Allan Percy Howse was posted to Camp Ipperwash as Officer Commanding in July 1994. He described Operation Maple as a security operation established to maintain timely information flow to higher headquarters on the operation of Camp Ipperwash, to protect the assets of the camp as much as possible, and to provide security to the camp staff. The mission of Operation Maple was “to secure



public property, and to ensure public safety at minimum cost.” With respect to staffing, Operation Maple consisted of officers assigned to Range Patrol and an available detachment of Military Police.

After Captain Howse arrived at Camp Ipperwash, he met with Carl Tolsma to negotiate topics such as the security element of Operation Maple. When Captain Howse arrived, he was instructed that the specific occupied areas and sites were to be observed but left alone. In July 1994, the sites were along Highway 21 in the ranges area and up in the dunes by Lake Huron. Toward the end of November 1994, Captain Howse understood that “since the announcement that the Government intended to return CFB Ipperwash to Native ownership, instances of conflict and confrontation at the Camp had decreased.” He also understood that “[t]he intent of Op Maple is to continue to avoid confrontation, to exercise due diligence with respect to public safety, to minimize the threat to public property through removal of recoverable assets, and to establish a minimum prudent manning level at the Camp.”

As part of Captain Howse’s role as Officer Commanding, he was to oversee the removal of recoverable assets. Recoverable assets included all things that could be picked up and moved. Other than firearms and ammunition that may have been kept by Military Police or those officers assigned to Range Patrol, there were no other weapons, firearms, or ammunition at Camp Ipperwash: the stores of ammunition and weapons had been removed in 1993.

The Military Police were primarily to provide security for the built-up area, and the Range Patrol were to go into the training area (the bush area in the tank ranges and throughout the 2,000 acres, excluding the firing ranges), but not into the camps that the occupiers had set up. There was no change with respect to the non-confrontational approach.

## 6.14 1995 — Growing Frustration

On March 30, 1995, Captain Howse informed his superiors about the points made in a radio interview with Carl Tolsma:

- a. the occupation of the land (Ipperwash) was taken upon by individuals to show that they were no longer going to back off pressing for the return of the land;
- b. the younger members of the band are difficult to control like in any other community, and the reported violence is blown out of proportion;

- c. the local police (OPP) are not willing to get involved with controlling any native rowdyism;
- d. this behaviour will likely get worse if the Govt. does not move quickly to return the land, and local residents should pressure local MPs to force Govt. action;
- e. the Govt. will not allow the natives to work on the clean-up project, denying natives work; and
- f. accepts the Ministry of Indian Affairs' position that "We are all one Band," and the Govt. should return the land to everyone.

Carl Tolsma was concerned with the length of time it was taking to resolve the issue of the land being returned.

During May 1995, it was reported to the military that Glenn George had been elected leader of the Stoney Point group. Beginning in the winter of 1994, Captain Howse had discussions with Glenn George while on patrol about his views of the land, the history of the land, and why the land was important to the Stoney Point group. At first, the discussions were not confrontational. But from Captain Howse's point of view, some time in spring 1995, things began to change.

Glenn George testified that he had never been elected Chief of the Stoney Point group. He had no desire to be a Chief or Councillor. He had been elected as a Councillor in June 1993, but does not remember being elected in 1994. In his view decisions should be made by consensus, which was part of Aboriginal culture.

In May 1995, Glenn George asked Captain Howse about the military presence in the camp, what the military was doing there, and why the military had not left yet. Captain Howse characterized Mr. George's tone as demanding and accusatory. Captain Howse understood that Glenn George was expressing his frustration that nothing had happened and that they had been waiting for so long for the return of the land.

In spring 1995, the CFB Ipperwash incident log was created. Inspector John Carson discussed with Detective Sergeant Mark Wright the maintenance of a daily reactive and proactive log. The CFB Ipperwash Incidents Log, covering the period May 2, 1994, to August 10, 1995, was intended to record all of the reported occurrences for both the OPP Forest Detachment and Grand Bend Detachment. Reported occurrences were treated like formal reports. OPP members were asked to provide information from their notes so it could be entered into the log. The log was sorted chronologically, by date, time, place, and source. John Carson could see who had been responsible for what so that he could talk to the right person if he needed additional information. The log was kept at the OPP Forest Detachment.



On May 14 and 15, 1995, there was a protest by members of the Stoney Point group and Kettle and Stony Point First Nation: signs were posted around the camp perimeter; thirty to forty people gathered at the gate to protest the planned DND environmental assessment; and people gathered at the Argument Hall in the training area.

In June 1995, Captain Howse thought that, as their frustration increased, the occupiers were becoming more aggressive in order to persuade the military to leave. On June 12, 1995, Captain Howse and another member of the military were conducting a patrol in the training area when stones were thrown at their vehicle. Captain Howse reported to his superiors that the incident showed an increased level of attempts at intimidation, since hard objects such as rocks and oak blocks had been used, rather than apples or potatoes. Captain Howse believed the incident reflected the occupiers' increasing concern and frustration with the length of time it was taking for the military to leave.

Inspector John Carson thought that in mid- to late June 1995, tension increased at the army camp. He felt that this was due to increasing frustration on the part of the occupiers with respect to the slow pace of the negotiations, along with the increased number of altercations between the military and occupiers. At this time, John Carson became aware that Glenn George appeared to be occupying a leadership role.

Around this time, there was an allegation that military personnel had slashed the tires of an occupier's vehicle. Marlin Simon testified that tires were flattened. He also said that the occupiers were always catching military personnel sneaking into their camps. Kevin George testified about an incident in which a drunk army person slashed the tires of his brother's (Marlin Simon's) four-wheeler. David George testified that army personnel slashed people's tents, stole flags, and stabbed tires. Glenn George tried to have the OPP investigate the flattening of tires, but nothing transpired.

On June 27, 1995, there was an incident involving Glenn George. Captain Howse had temporary barricades erected during the evening and night of June 27 on a bridge over a small creek, which separated the built-up area from the training area. Some infrastructure of the barricades stayed permanently on the bridge. On June 27, 1995, the Military Police reported to Captain Howse that Glenn George was at the bridge and was removing the infrastructure from the barricade. Glenn George testified that he removed steel fence posts and barbed wire from the road. Captain Howse went to the bridge to observe what Glenn George was doing, and he and Glenn George had a disagreement. Glenn George then hit the side of Captain Howse's vehicle with his tractor. Glenn George, during the confrontation, said that he was concerned about his people being injured. Glenn George testified at the Inquiry that having the items on the road was

dangerous, as there were no signs or lights to warn people. He stated to Captain Howse that the military personnel should not be on any part of this land and that they had to get off the land. The incident was reported to the OPP and investigated by Detective Constable Speck.

Charges were laid against Glenn George. He pled guilty and was convicted of mischief under \$5,000, uttering death threats, and two counts of assault. He received a suspended sentence and was placed on probation for fifteen months. Glenn George testified at the Inquiry that he feels uncomfortable with the fact that he has a criminal record for occupying lands that he views as his inheritance. He testified that it would be fair to say that prior to moving onto the range he had had a normal relationship with the police, and after, it changed for the worse. He thinks that others have had the same experience.

At the end of June, the military suspended all Range Patrols in the training area: "Patrolling will be restricted to the built-up area of the camp and the exterior perimeter [of the outer fence of the Camp]. To avoid unnecessary confrontation, areas occupied by the SPG will not be patrolled."

OPP all-terrain-vehicle (ATV) patrols, which had been instituted between West Ipperwash and Port Franks through the army camp, were discontinued at the request of Glenn George.

On June 30, 1995, Inspector John Carson met with members of the military. They discussed the decision that the military police would patrol the exterior perimeter of the base, particularly around the gun ranges. There would be no patrol of the training area, and after dark, there would be no patrol outside of the built-up area of the military base. John Carson was aware that the military would be clearing most of its equipment from the base by July 15, 1995. The military's plan was to remove the assets from CFB Ipperwash during the period from July 3 to 17, with all recoverable assets from the camp due to be removed by July 17, 1995. Recoverable assets were those that could be easily moved, such as vehicles, equipment, office supplies, and furniture.

At the end of June 1995, Captain William Douglas Smith was appointed as the Tactical Commander or Commanding Officer of the security force at CFB Ipperwash. Captain Smith had been involved peripherally with CFB Ipperwash since May 1993, when he served as the Base Security Officer and Commander of the Military Police at CFB Toronto and coordinated six-week secondments of Military Police officers to CFB Ipperwash. Captain Howse's role changed with the arrival of Captain Smith: he took on administrative responsibilities while Captain Smith took charge of the operation and protection of camp assets. When he arrived, Captain Smith understood that the Canadian Forces non-confrontational policy with respect to the occupiers had not changed from the policy that had been instituted in 1993.



Captain Smith saw his role as one of trying to maintain a degree of calm in what seemed to be a fairly confrontational situation, and trying to peacefully hand over the base to the Stoney Point group. Captain Smith established a liaison relationship with Staff Sergeant Charlie Bouwman from the OPP Grand Bend Detachment.

There were very few incidents in July at the army camp or the park except for ongoing issues with the military. John Carson had little involvement from July 3, 1995, to July 27, 1995.

On July 4, 1995, Captain Smith met with the Kettle and Stony Point First Nation Council. The purpose of the meeting was to introduce himself to the Band and its leadership, to explain what the military were trying to accomplish, and to see if they could mutually come up with a solution to the problem of violence or potential for violence on the base. Council members told Captain Smith that they had no control over the people at the army camp.

As of July 5, 1995, Captain Smith felt that all groups seemed to be in a holding pattern to see “who would blink first.” They had achieved an uneasy calm, and were just waiting to see how things would progress.

## 6.15 July 1995 — Cross-Cultural Awareness Training

Cross-Cultural Awareness Training (CCAT) was held at the army camp for military personnel on July 12 and 13, 1995. Bob Antone was contacted by Priscilla George, who worked for the provincial government in Toronto with the Native Education Policy Unit, Ministry of Education and Training. She told Mr. Antone that she had received a call from the DND, or somebody, asking if they knew of any facilitators who could do some sensitization work with the military at Ipperwash. She asked Mr. Antone if he would like to do this. Mr. Antone agreed.

A number of people attended as instructors and facilitators: Bob Antone; Bruce Elijah; Dick Bressette, Elder, Kettle and Stony Point First Nation; Captain David Scandrett, Canadian Rangers; Priscilla George and Leigh Jessen, both with the Native Education Policy Unit, Ministry of Education and Training, Ontario; Paul Trivett and Murray Wood, First Nations Policing Section, OPP; and Peter Moon, reporter, *The Globe and Mail*. Although an invitation was extended to the Stoney Point group, no occupiers attended.

Bob Antone understood that there was a bit of badgering going on between the soldiers and the men from Stoney Point and that some of the military men were making racist statements about the Stoney Point people. One of the reasons for the sensitization process was to prevent the situation from escalating. The objective was cultural sensitization: helping people to understand the Aboriginal culture and

world view. The military personnel did not understand that there were deeply rooted feelings and attitudes around the people's belief that it was still Stoney Point land. The objective was to try and build a relationship between the Stoney Point people who were occupying the range and the military personnel.

In the sensitization process, Bob Antone and Bruce Elijah offered the Aboriginal perspective of what had happened in North America, how the invasion of North America impacts on the makeup and the dynamic of the Anishnabek person or the Ongwahonay person, and how it causes certain attitudes and beliefs about society. Mr. Antone testified: "[P]eople say, 'Well, why don't you trust the white man?' I say, 'Why should I? Show me one treaty that wasn't broken. You know, show me one agreement that wasn't broken' — and that's evidence enough right there as to why you don't trust the white man. That's a reality in our communities." Mr. Antone thought they were successful in helping the military personnel understand their perspective as indigenous people with respect to relationships, treaties, and the dynamics of Western society and indigenous society.

In Bob Antone's view, the cross-cultural awareness training was, to some degree, successful. He heard that there was a reduction in the number of incidents between the Stoney Point people and the men who were patrolling the area. From what Captain Smith said to Bob Antone, it reduced the intensity of the interactions between the men on the base.

Bob Antone and Bruce Elijah met with the Stoney Point people shortly after the training and talked to them about whether it was possible to try and work out some arrangements with respect to co-existence in the territory.

During the process of the CCAT, a plan was made to bring everyone together at a meeting on August 26, 1995. In his situation report dated July 14, 1995, Captain Smith listed the proposed attendees, representatives from all involved groups. The military thought that the meeting could reduce tension between the Stoney Point people and military personnel at Camp Ipperwash, and could ensure that the environmental assessment was completed in conjunction with an orderly handover of the land.

With respect to the proposed meeting on August 26, 1995, it was strongly recommended that the military participation at the meeting be kept at the lowest level possible. According to Captain Smith, every effort was to be made in support of this meeting as the military had a "window of opportunity" to eliminate a confrontational situation, achieve the political aim of properly returning "cleaned up land," and establish credibility with the First Nations people for possible future land claim issues.

Captain Smith understood that Chief Tom Bressette was not in support of the meeting scheduled for August 26, 1995, and that Bob Antone and Bruce



Elijah hoped to meet with him on July 25 or 26, 1995, to convince him to support the meeting.

On July 27, 1995, Captain Smith reported that Bob Antone was continuing his contact with the Stoney Point Group who were in the process of picking three people to attend the proposed August 26 meeting. Ultimately no meeting took place on August 26, 1995.

The target date for removal of recoverable assets was pushed back from July 17 to July 28, 1995. The final cleanup of the built-up area was to be completed by August 4. Although they were close to having most of the assets out, they were not all out by July 28.

## **6.16 June 1995 — Campaign and Election of Michael Harris and the Progressive Conservative Party of Ontario**

In June 1995, Michael Harris's Progressive Conservative Party won the provincial election, and Mr. Harris became Premier of the province.<sup>5</sup> Shortly after he became Premier, Mr. Harris appointed the members of his Cabinet, including Charles Harnick as the Attorney General and Minister Responsible for Native Affairs, Christopher Hodgson as Minister of Natural Resources, and Robert Runciman as Solicitor General. Each of these Ministers, as well as the Premier and the Ministers' respective Ministries, would eventually become aware of and involved in the government's response to the events at Ipperwash Provincial Park.

The Progressive Conservative Party campaigned on a set of policies named, collectively, "The Common Sense Revolution." That platform was first introduced in 1994, after having been developed over a number of years while the Progressive Conservatives served as the official Opposition. The Common Sense Revolution did not specifically address policies or issues involving First Nations, although Mr. Harris testified that a number of the initiatives and economic policies in The Common Sense Revolution would affect Native Ontarians.

The Progressive Conservative Party had conducted a series of public consultations prior to the June 1995 election where First Nations issues were discussed. In January 1995, Mr. Harris toured Northern Ontario, in what was termed

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5 Mr. Harris was first elected as an MPP in 1981 in the riding of Nipissing, and went on to become Parliamentary Assistant to the Minister of the Environment (1983-1985), Minister of Natural Resources (1985), Minister of Energy (1985), Opposition House Leader (1985-1986), Critic for Natural Resources (1985-1986). Prior to being elected as an MPP, Mr. Harris was, among other things, a school teacher. He also worked in a family-owned tourist and ski resort business and from 1975 to 1981, and he was a school trustee on the Nipissing Board of Education.

the “Northern Focus” tour. A campaign document entitled “A Voice for the North” was drafted as a result, based on what was heard from people during the public consultations that took place during this tour. Municipalities, tourist operators, non-Native hunters, anglers, trappers, and resource companies participated in the meetings. It does not appear that First Nations participated in developing the positions outlined in “A Voice for the North.”

Under the heading “Native Issues,” “A Voice for the North” noted the concerns raised by non-Aboriginal people about the land claims negotiations process:

There is growing anger and resentment over Queen’s Park’s handling of native land claims in Northern Ontario. *Non-natives voiced concern and consternation that land claim negotiations are conducted behind closed doors.* With most of Ontario under some form of land claim, resource companies said they were worried about the potential impact of settlements on property rights and long-term development.

In many instances, Northern Focus found that Queen’s Park was alienating non-natives. People believe that two systems of conservation law are being created: one for natives, and another for non-natives. (emphasis added)

In “A Voice for the North,” Mr. Harris stated that, if he became Premier, non-Natives would be included in land claim negotiation processes involving the provincial government:

#### OUR COMMITMENTS

A Mike Harris government will balance the interests of native and non-native Ontarians by ensuring that all stakeholders are represented in native land claims negotiations. Native rights must be respected, but land claims negotiations cannot be the exclusive preserve of provincial bureaucrats and native band leaders.

By the same token, a balance must be struck between native hunting and fishing rights and the priorities of conservation, with equal treatments for all Ontarians.

In a Progressive Conservative Party policy document dealing with planning and local government, though not circulated to the public prior to the election, the party indicated that, were it to come into power, it would promote and encourage economic development in Native communities, and that it would strive to strike



a balance between Native hunting and fishing rights and Ontario's conservation priorities. The document, entitled "Bringing Common Sense to Community Development," also stated that the party would insist on the application of the "same conservation rules for all Ontarians." Finally, it stated that the party would "work with native leaders to reflect aboriginal concerns and include the native viewpoint in government policies."

The document did not discuss the implications of these objectives in relation to the Crown's obligations under section 35 of the *Constitution Act*. As the original occupants of the lands that later became Canada, Aboriginal people enjoy certain unique rights not enjoyed by other Canadians. Aboriginal people also enjoy rights as a result of treaties that they or their ancestors made with the Crown. Section 35 of the *Constitution Act* recognizes and affirms those rights.

Notwithstanding these position documents, Mr. Harris testified that he had not decided, prior to or in the two months following the June 1995 election, what direction his government would take concerning Aboriginal issues. The main priorities of his government were evident in the policies articulated in *The Common Sense Revolution*, and later in Premier Harris's Throne Speech and the legislative agenda: economic issues, including \$2 billion worth of spending cuts that the Progressive Conservative government undertook in its first year in power.

Mr. Harris testified that neither his government nor he took the position in summer 1995 that Aboriginal people did not have any special rights. Other witnesses disagreed. Gordon Peters was Regional Chief for the Chiefs of Ontario in 1995. His organization did not have any communication with the new government in the months following the June 1995 election. He testified that normally the Chiefs met with new Premiers and their Cabinets to discuss relationships shortly after an election. In contrast, there were no meetings with Premier Harris's government about the future of the government-to-government relationship and no dialogue such as the Chiefs had engaged in with the previous NDP government.

Mr. Peters characterized the election strategy of the Progressive Conservative Party as emphasizing the "equal" treatment of all people, including Aboriginal people. He explained what the concept of "equal" treatment means to Aboriginal people, when applied to their relationship with the Crown:

It means that on the parts of the government that they're going to step up their processes of assimilation. They're going to try to bring us into the mainstream. It means they're going to disregard our treaty

relationships and ... virtually revert back to the 1969 White Paper that set out a process about how ... Indigenous peoples would be swallowed up within the politic of Canada.

Mr. Peters went on to testify that, from the perspective of the Chiefs of Ontario, the policies and approach of the new government demonstrated that it was intent on ignoring the historic and constitutional elements of the relationship between First Nations and the Crown.

Some members of the civil service who played a role in briefing the new government during the summer of 1995 registered concerns similar to those raised by Mr. Peters. They spoke of an apparent lack of awareness on the part of certain Ministers and their political staff that Aboriginal people enjoy a unique constitutional status and protection under section 35 of the *Constitution Act*, which the provincial government was required to respect.

Julie Jai was Acting Legal Director of the Ontario Native Affairs Secretariat (ONAS) in 1995. She testified that Minister Harnick, the Attorney General, appeared sensitive to the Constitutional requirements imposed on the government concerning Aboriginal people. Ms. Jai also briefed the Minister of Natural Resources and his staff, as well as some staff from the Premier's Office, about Aboriginal issues and section 35 of the *Constitution Act* during the summer of 1995. She testified that some members of the Premier's staff, including Deb Hutton, Premier Harris's Executive Assistant, appeared initially "surprised ... that Aboriginal people had constitutionally protected rights and there were certain obligations and constraints on the Provincial Government." The Premier's staff requested, and Ms. Jai prepared, further briefing material concerning the legal basis for these rights and obligations.

Ms. Jai testified that when she attended a briefing at the Ministry of Natural Resources on the provincial government's constitutional obligations toward Aboriginal peoples, Minister of Natural Resources Christopher Hodgson and his staff responded by emphasizing that, regardless of section 35 of the *Constitution Act*, their view was that Aboriginal people have the same rights as everybody else. Ms. Jai reiterated that Aboriginal people had special status as the original occupiers of the land, and that the provincial government was legally bound to respect that status. She testified that she understood that the Minister and his staff maintained their position that there are no special rights for Aboriginal people.

Ms. Jai testified that the new government's apparent lack of knowledge and concern about the province's obligations toward Aboriginal people represented a "180-degree shift" from the policies and practices of the previous government. She



and other ONAS employees were anxious about the implications of this shift and its possible impact on the relationship between Aboriginal people and the province, as well as on ONAS employees' ability to do their work.

Shelley Spiegel, who in September 1995 was the Acting Executive Coordinator in the Cabinet Office, dealt frequently with members of the Premier's Office on policy issues. She was responsible for advising on various policy areas, including Native Affairs. She testified that during the summer of 1995, she understood that the new government intended to head in a new direction with respect to policies affecting Aboriginal people. While she was not aware of or could not recall any specific policy directives or initiatives concerning Aboriginal people, she understood that the new government did not intend to further the progress made over the previous ten years under successive governments with respect to Aboriginal rights, and that the "new direction" would involve a less sympathetic approach.

Ms. Hutton testified that, as far as she knew, the Harris government had no intention of disregarding either the requirements of the Constitution respecting Aboriginal rights or the legal rights of Aboriginal people apart from the Constitution.

Minister Hodgson and his Executive Assistant Jeff Bangs both testified that Mr. Hodgson did not and would not make statements either denying that Aboriginal people had constitutionally protected rights, or indicating an intention to disregard those rights. They each gave evidence to the effect that Minister Hodgson spent a great deal of time during his tenure as Minister of Natural Resources on Aboriginal issues, and was fully aware of the obligations imposed by section 35 of the *Constitution Act*.

Larry Taman, Deputy Attorney General during the summer of 1995, had had several years' experience in the public service. He attended and participated in many of the briefings Ms. Jai recalls. He testified that he did not remember hearing that the government would insist that Aboriginal people did not have treaty or Aboriginal rights at the meetings he attended. Mr. Taman recalled, though, that there were indications that people from the Premier's Office were exploring differences in policy that they might like to advance and were talking about issues differently from the previous government. He commented, however, that a first initial challenge for all governments is to make the transition between the campaign trail and being a government.

Mr. Taman observed that the difference between campaigning and governing was that, while campaign speeches often have limited consequences, statements by government can have critical consequences, with the result that members of new governments need to find ways, and perhaps be educated by members of

the professional public service, to be more careful about what they say. He agreed that members of the new Progressive Conservative government were undergoing this educational transition process during the summer of 1995, and that it was the role of the professional public service at a time of change of government to assist them in making the transition from campaigning to governing by educating them as to facts either in law or government policy.

Prior to the June 1995 election, Larry Taman directed Attorney General staff to prepare briefing material in anticipation of a possible change in government to ensure that the civil servants at the Ministry were fully prepared to properly brief, educate, and assist a new government. Several of the Ministers and their staff testified that during the summer of 1995, they underwent a veritable whirlwind of briefings intended to orient them regarding the issues falling within their portfolio. It was, as a result, sometimes difficult for these witnesses to remember specific briefings in any detail, or at all.

It is clear that different actors had different perceptions and views of the policies of the new government. The new government may not have thought out its positions with respect to a variety of issues. As Mr. Taman said, there is a difference between running for election and running a government, and there is a transition period between the two where the political actors must adjust to their new role, and the civil servants and others must adjust to the new government.

## **6.17 June–September 1995 — Ministries and Offices in the Ontario Government**

Before discussing the events of September 1995, and the provincial government's activities during the crisis at Ipperwash, it may be of assistance to understand the relationships between Ministers, their political staff, and civil servants, as well as the specific roles and responsibilities of various individuals, departments, and Ministries in the Province of Ontario during summer and fall 1995.

### ***6.17.1 The Structure of the Provincial Government***

Ontario's system of government is based on the concept of ministerial responsibilities. Ministers are accountable to the Legislature and ultimately to the people of the province. All members of Cabinet are Ministers, including the Premier. Ministerial responsibility is both individual and collective, in that individual Ministers, as well as the Cabinet as a whole, are expected to explain, and sometimes justify, the direction and management of government in the face of questions and criticisms from the Opposition, the media, and ultimately the people.



The Premier appoints Ministers, who report directly to the Premier. The Premier also appoints a Secretary of Cabinet, who is the senior public servant in the Ontario government and is associated with the Cabinet Office. The Secretary of Cabinet is responsible for hiring Deputy Ministers, and his or her role is essentially equivalent to acting as the Premier's Deputy Minister. Deputy Ministers report to the Secretary of Cabinet.

Ministers sit at the top of two distinct reporting lines. One reporting line is through the bureaucracy, or civil service, of the Ministry. The civil service reports up a chain of command to a Deputy Minister, who is responsible for the administration of the Ministry. The Deputy Minister provides advice and also reports to the Minister.

The second reporting line is comprised of the Minister's political staff, which is organized in a fashion chosen by the Minister. Political staff, including Ministers, have no authority with respect to civil service staff. Requests to the civil service must go through the Deputy Minister. If the Deputy Minister considers it appropriate, he or she will direct the appropriate person in the appropriate branch of the Ministry to do the work.

David Moran, the Attorney General's Executive Assistant, described each side of the government as working like a "mirror image" of the other, with the civil service on one side and political staff mirroring them on the other.

### ***6.17.2 The Role of Deputy Ministers***

Deputy Ministers are members of Ontario's professional public service and are not elected. They are responsible for providing advice to government through their respective Ministers, running the Ministry itself, and participating in the overall governance of the public service. The Deputy Minister's main roles are to ensure that his or her Ministry implements the policies set by the Minister, and to coordinate and manage the activities of the civil servants working in his or her Ministry. Deputy Ministers must ensure that coherent information and advice flows up to the Minister from the civil service.

A significant part of the Deputy Minister's role is to mediate or act as a buffer between the civil service below him or her and the political staff working directly under the Minister. Information that flows from the civil service to the Minister passes through several hierarchical filters, culminating in the Deputy Minister. Each successive filter is intended to enhance the accuracy, coherence, and therefore value of the information eventually provided to the Minister. Similarly, directives from the Minister and his or her staff to the civil service are directed first to the Deputy Minister, so that the Ministry's and government's

policies can be implemented and operations can be realized in a coordinated, integrated, and effective manner.

The activities of the many levels and branches of the civil service must be coordinated, or the enormous and enormously complex task of governing the province cannot be accomplished effectively. There are two main risks associated with not adhering to appropriate reporting relationships.

Firstly, as former Crown counsel Scott Hutchison testified, the reporting structure is intended to ensure the development of coordinated, coherent, integrated policy with respect to a broad range of issues. If information or advice is sought by a Minister or his or her staff from individual members of the civil service, the result may be that the Minister receives information that is based solely on the area of expertise of the particular civil servant who may not appreciate how a particular issue fits into the broader mandate of the Ministry or government in general. The Minister would then not receive the more refined and (again) integrated advice that is produced when information is filtered up through the various levels of the bureaucracy.

Secondly, a possible result of direct interaction between political staff and civil servants might be that “one little piece” of an integrated policy being developed by the Ministry’s bureaucracy would be communicated, and that piece might or might not reflect the coherent and more refined product that the Minister would benefit from and for which the Deputy Minister is responsible.

### ***6.17.3 Executive Assistants***

Executive Assistants are political staff. Their role is to provide support to their respective Ministers in setting policy. When a new government is sworn in, each Minister hires his or her Executive Assistant. An orientation session is then held for the Executive Assistants, conducted by the Cabinet Office and the Premier’s Office, to build relationships and develop guidelines for each Minister’s office. Jeff Bangs, Executive Assistant to former Minister of Natural Resources Christopher Hodgson, testified that Executive Assistants have four main areas of responsibility:

1. To manage the Minister’s office;
2. To look after the Minister’s political responsibilities and responsibilities to constituents;
3. To liaise with other Ministers’ offices and the Premier’s Office;  
and



4. To build relationships with the civil service within the Ministry.

Mr. Bangs identified this last task as being the “most important” of an Executive Assistant’s responsibilities.

Deb Hutton described her role as Executive Assistant to the Premier as “facilitating the best possible decision making and the best ... carrying out of the duties of the Premier.” She briefed the Premier with respect to any issues or crises that arose, conveyed his views at meetings or elsewhere when asked to do so, prepared him for Question Period, ensured the government had a spokesperson identified on particular issues, and helped to craft the government’s public message on issues.

Executive Assistants normally remain in close contact with their Ministers, communicating throughout the day. They represent Ministers at meetings, conveying the views of the Minister at the meeting and bringing information back to the Minister from the meeting. Executive Assistants advise Ministers on the political considerations arising from any issue or decision. They also provide support to staff in the Premier’s Office to ensure that the Premier’s staff is aware of any issues arising from a particular Ministry’s business of which the Premier should be made aware.

#### ***6.17.4 Cabinet Office***

The Cabinet Office provides bureaucratic or public service support for the Premier’s Office and the workings of Cabinet. (The Premier’s Office is comprised entirely of political staff, and not civil servants.)

#### ***6.17.5 Ministry of the Attorney General***

The Attorney General has a number of distinct roles and duties. The Attorney General is the chief law officer of the Crown and the primary legal advisor to the government, with the responsibility of ensuring that all governance of the province is conducted in accordance with the law. He or she is the principal overseer of all the legal dimensions of the work of the government, and along with the staff of the Ministry of the Attorney General, provides legal advice to the government.

He or she is responsible for the administration of the courts, the civil law practice of the Ministry of the Attorney General, and all criminal prosecutions, as well as running the offices of the Public Guardian and Trustee, the Office of the Children’s Lawyer, and Legislative Counsel. The Attorney General is responsible for the administration of a number of tribunals, as well as certain pieces of

legislation, including the *Courts of Justice Act* and statutes dealing with people who cannot manage their own affairs. The Attorney General is also responsible for the Special Investigations Unit, which investigates when a member of the public dies or is injured while involved with police officers.

The Attorney General is a member of Cabinet, involved in day-to-day political life. At the same time, the Attorney General fulfills a number of other roles, with respect to which complete independence from Cabinet and the Premier must be exercised. It is particularly important that the Attorney General acts entirely independently, and without the advice or direction of Cabinet, with respect to criminal prosecutions.

The Deputy Attorney General plays a significant role in ensuring that the Attorney General's office is independent and free from political interference in its execution of those functions that the Attorney General must perform without political direction.

#### 6.17.6 *The Ontario Native Affairs Secretariat (ONAS)*

One of the first changes implemented by Premier Harris in June 1995 was to make the Attorney General responsible for ONAS, which had previously been the responsibility of the Minister of Natural Resources. ONAS's mandate was to:

1. assist the Government of Ontario in creating opportunities and initiatives which advance the recognition of the rights and aspirations of Aboriginal peoples;
2. contribute to an improvement in the quality of life of Aboriginal peoples; and
3. resolve issues of concern to Aboriginal peoples that are within the [p]rovince's authority, responsibility, resources and priorities.

ONAS provided advice to the Government of Ontario on Aboriginal issues, and dealt with those issues when they fell under provincial responsibility and jurisdiction. Part of its role was to ensure consistency across the various Ministries that dealt with First Nations people. It was not a front-line Ministry: it did not deliver services, but monitored and coordinated the services delivered by other Ministries. It was also responsible for negotiating land claims and self-government agreements on behalf of the provincial Crown.

Prior to June 1995, ONAS had its own Deputy Minister and its own bureaucracy. The new Progressive Conservative government folded ONAS and its bureaucracy into the Ministry of the Attorney General. Ms. Jai observed that



after ONAS became part of the Ministry of the Attorney General and no longer had its own Deputy Minister, it lost a certain amount of prestige and access to decision-makers.

#### ***6.17.7 Ministry of Natural Resources (MNR)***

The MNR is one of the largest operational ministries in the province, as well as being one of the most decentralized — it is responsible for the administration and stewardship of provincial parks in well over one hundred locations in the province. Among other things, the Ministry is responsible for ensuring that processes outlined in the *Cemeteries Act* governing burial sites, including Aboriginal burial sites, are adhered to, where there is an allegation of a burial site within a provincial park.

#### ***6.17.8 Ministry of the Solicitor General***

The Solicitor General oversees policy development in policing and is responsible for ensuring that the *Police Services Act* is adhered to. The Solicitor General is the guardian of the line of demarcation between politicians and the police to ensure there is neither the fact nor the appearance of political interference with the police by other Cabinet Ministers. He or she is responsible for ensuring the appropriate separation between police and politicians.

The relationship between the Solicitor General and the police is very carefully circumscribed in relation to the line between policy and operational matters. The Solicitor General can impose policy that would affect the operation of the force, but cannot influence operational matters and has no direct contact with police officers concerning operational matters.

Under the *Police Services Act*, the Commissioner of the OPP has control and management of that police force, subject to the direction of the Solicitor General. In broad terms, the Solicitor General is entitled to know about the operations of the OPP, though any inquiries about operations must relate to general information only, and must go through appropriate channels to ensure that the spectre of political interference is not raised. Former OPP Commissioner O’Grady agreed that if the proper protocol for communication between the Solicitor General and the police were overridden, particularly in the area of police operations, it could give rise to the perception or reality of political interference.

According to former Commissioner Thomas O’Grady, the Solicitor General and the OPP Commissioner would occasionally speak directly about general or administrative issues. In practice, the Commissioner dealt most often with the

Deputy Solicitor General, who acted as a buffer or filter between the Commissioner and the Solicitor General to ensure that politics did not interfere with operations. The flow of information between the Deputy Solicitor General and the Commissioner may have been somewhat freer, although both (again) acted as filters in deciding what information should be passed on to their respective organizations. If the Deputy Solicitor General did receive operational information, he or she would ensure that only information essential to the Solicitor General's function as a Cabinet Minister and Solicitor General was passed on to him or her.





## OCCUPATION OF THE ARMY BARRACKS, “THE BUILT-UP AREA”

### **7.1 Stoney Point People Decide it is Time to Reclaim Their Reserve**

The occupation of the army barracks at Camp Ipperwash at the end of July 1995 was not impulsive. First Nations people discussed in advance the reasons they believed it was time to take over the “built-up area,” that is, the living quarters and administrative buildings used by the military. They also planned the way in which the occupation would be executed.

At gatherings, generally at the beach, Aboriginal women, men, and teenagers discussed why they should move into the army barracks. They were exasperated with the futility of their attempts at the return of the Stoney Point Reserve. Letter-writing campaigns and other attempts to negotiate with the federal government had not been successful. The Aboriginal people were frustrated with the federal government’s lack of interest, attention, and what they perceived to be the lack of goodwill in fulfilling the promise made in 1942 to return their land after World War II.

Warren George participated in these discussions. He had been involved in sending about half a dozen letters to federal politicians, including the Prime Minister. The response was always the same; they just said, “they were looking into it and that was it.” Nothing ever materialized. Mr. George explained that the purpose of the occupation was to “draw attention” to the issues, to “get the government to start to do something about the return of the land.” Jeremiah George echoed the same sentiments: people felt “nothing was getting done ... They felt that nothing would get done ... without action.”

The Stoney Point people were also exasperated at the taunting and constant altercations with military personnel since the occupation of the rifle range in 1993. Tension was clearly escalating between the soldiers and the Aboriginals. The teasing, harsh language, and pranks were wearing on many Aboriginal people. Rose Manning said the soldiers would routinely “march around and chant away ... saying that we forgot to pay our taxes”; “they used to march around the highway and taunt us all the time.” According to the Ontario Provincial Police (OPP), and in particular, Inspector John Carson, there was clearly antagonism on both sides.



About a month before the July 29 occupation, Marlin Simon's tires on his "four-wheeler" were slashed. He claimed that military personnel, in an inebriated state, had deliberately caused this damage. This increased the tension "[b]etween us and the military," and was a catalyst for the regular meetings on the beach outside the army camp, at which the First Nations people decided to enter the built-up area. Marlin Simon said:

... everybody figured it was about time. They were fed up with these army guys, military people ... causing trouble ... The military police ... couldn't [take] care of their own guys, so it was time for them to go before something bad really did happen.

A further reason for the decision to occupy the army barracks was to move into warmer shelters before the fall and winter as the weather became colder. The Aboriginal occupiers of the rifle range did not have adequate facilities to endure the winter months, and consequently, many moved back to their homes in Kettle Point and other locations. Roderick George described the harsh living conditions endured by people such as Dudley George who remained on the rifle range throughout the cold winter: "I remember in the winter time when it was pretty cold ... in Dudley's trailer ... [T]he wind would even blow right through it and I remember we'd say, 'We should be sleeping in those buildings, they're on our land.'" There was concern that the Elders, in particular, should have warmer accommodations as the temperatures dropped in the late months of 1995. As Marlin Simon said, we wanted "[t]o establish a place for where we could have Elders stay ... maybe get a building from the military ... we figured we might be able to have something for them by the time wintertime showed up." Clifford George, at the age of 73, was one of the Elders who had lived at the army range throughout the winters.

People such as Gina George were frustrated that the federal government was only interested in communicating with the Kettle and Stony Point Band. The government refused to initiate discussions with the occupiers, many of whom were descendants of former residents of the Stoney Point Reserve, the reserve appropriated by the Department of National Defence:

... all the government wanted to do was talk, and all the government wanted to do was talk to the Kettle Point Band. They didn't want to talk to the Stoney Point people that were originally removed from those lands ... [H]ow were we ever going to get the land back, when they're dealing with another faction that did not own these lands?

Earlier that summer, Gina George was informed by her son Nicholas Cottrelle that Stoney Point descendants were meeting on the beach to discuss the occupation of the army barracks. Initially, she was not very receptive. But after listening to the reasons expressed by her son, Gina George agreed it was time to physically take control of their reserve. In emotional testimony, Ms. George recounted what Nicholas told her:

And pretty soon grandpa's not going to be here. And grandpa wants to move home. And if we wait until the military decides to give this land back, grandpa may not be able to rebuild his home. Even though he's there, he wants to know that the land is actually coming back to his people ...

... I think that they felt like they'd waited long enough for the military to give back land. It was like almost fifty years ... or there was more than fifty years, and he said how much longer are we going to wait? Are we going to wait 'til your generation has gone too, before we wait for the military to give it back? Am I going to be old before they give it back? Him — speaking of his own age group. Are we going to be still trying to get back lands that they promised to give back a long time ago? We're tired of listening to them ... All they do is talk, talk, talk. We're tired of hearing talk, and we're just going to take some action, and that's all there is to it. And if they don't like that we're taking back our land, well, too bad for them, because the land belongs to us.

Nicholas' grandfather Abraham (Hamster) George had occupied the rifle range in May 1993 with his grandsons and felt strongly about the return of his land. Gina George was persuaded by her son's comments: "I just felt like if the land was going to come back to the people, I guess that was the only way they were going to get it back ... he was right."

Carolyn George expressed the views of many Aboriginal people who decided to move into the barracks at the end of July 1995. She, like other Stoney Point descendants, felt she "should have been able to grow up there," and had aspirations that Stoney Point would be "up and running as a full functioning reserve, as any other reserve in Canada."

As Kevin Simon said, people actively supported the occupation because they firmly believed the land belonged to the Aboriginal people from Stoney Point. It was time to take it back from the federal government.



## 7.2 Concrete Plans to Occupy the Army Barracks

On July 29, 1995, about twenty-five to thirty First Nations people gathered at “The Pass,” a spot on the beach where they traditionally congregated, to discuss their plans to occupy the army camp. Men, women, Elders, and teenagers were at this meeting, as well as people from other reserves. People such as Glenn George, Marcia Simon, Marlin Simon, Rose Manning, and Bert Manning were involved in the plans to take over the built-up area. Marlin Simon and others had previously spoken to First Nations people from Oneida, Walpole Island, and Sarnia, as well as Moraviantown, Muncey, and the Chippewas of the Thames, urging Aboriginals from other reserves to support the takeover of the barracks. Isaac Doxtator from Oneida was asked to bring men to Ipperwash in advance of the army camp occupation. As he said, they “showed up at the camp from everywhere,” including the United States.

First Nations people decided to enter the military camp from different locations. Harley George, a fifteen-year-old boy, was instructed to drive the yellow school bus into the barracks with children as passengers. The bus belonged to Warren George, Harley’s father. Marlin Simon explained that the bus was a “diversion”; according to the plan, while the bus with First Nations children entered an area patrolled by the military (the beach side, the northern part of the built-up area), Aboriginal men, women, and Elders would drive into the built-up area from other locations of the military camp.

Harley George was told to drive the bus on the dirt road inside the military camp that was parallel to Army Camp Road. Only “young guys” were to be passengers on the bus. As Tina George said, “I specifically remember that because I was trying to board that bus and catch a ride up there myself, but I was told I couldn’t because I wasn’t a young guy.”

Harley George, not old enough to have a driver’s license, was given the responsibility of driving about ten other children in the school bus. The fifteen-year-old had previously operated the bus about six times, but had never received driving lessons from an adult. As he said at the hearings, “I had taught myself.”

## 7.3 The July 29 Occupation

Without notice to the military or the police, the school bus driven by Harley George entered the north gate of Camp Ipperwash at approximately 1:30 p.m. on July 29, 1995. About ten boys were on the bus, including Nicholas Cottrelle, Leland White, and several of Rose Manning’s grandchildren. They ranged in age from eleven to sixteen years, with the exception of one person who was in his twenties. As instructed, Harley George drove along the road parallel to Army

Camp Road. Harley knew that when the bus entered the built-up area, other First Nations people were accessing Camp Ipperwash from other locations.

As the school bus approached the north side of the built-up area, a gate obstructed their way. Harley turned the bus around, "backed it through the gate," breaking the chain lock. The children heard glass from the rear window of the emergency exit door smash and fall to the floor of the bus. Harley promptly turned the bus around and proceeded to the Parade Square where he navigated the vehicle in a figure eight around several transport trailers stationed in the square. Military personnel in a jeep began to follow the bus as it approached the door of the Drill Hall. Harley George "pulled up to the door slowly and began to push it in with the bus." The military jeep parked behind the bus at a ninety-degree angle. Harley immediately reversed the gears and backed the bus into the jeep pushing it for about forty to forty-five feet. The bus hit the military vehicle with a fair amount of force. Harley pushed the jeep because he "didn't want to be contained by that vehicle" and "didn't want to talk" to the military officers.

A military police officer (MP) tried to board the bus. Harley George attempted to close the bus door, but the MP was able to push part of his body through the doorway. He stood on the first step of the bus, and an altercation ensued. The officer sprayed the fifteen-year-old in the face with pepper spray. Harley jumped out of his seat. As he passed the MP in the doorway, Harley tried to kick the officer:

... as I was walking away from him, he kicked my foot and I fell down on the pavement ... [A]fter that I went after him ... I tried to fight him ... [W]hen I was walking towards him, kind of fast, he was spraying pepper spray at me. I had my hand in front of my face to block the stream of the pepper spray ...

Nicholas Cottrelle and the other children exited the bus through the rear emergency door.

As Harley George struggled with the officer, Cleve Lincoln Jackson drove a forklift that belonged to the military through the doors of the Drill Hall. Military officers ran alongside the forklift, trying to pepper spray Mr. Jackson as he drove around the Parade Square. Rose Manning explained that the forklift was brought out to "scare the [military] guys away from the kids ... [I]nstead of going after the little kids, then they would have somebody else to chase around."<sup>1</sup> During

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<sup>1</sup> Rose Manning died in August 2006 prior to the Final Submissions at the Inquiry. Cleve Lincoln Jackson was subsequently arrested for this act.



this confrontation with the military, vehicles with First Nations passengers entered the Parade Square.

Harley George's eyes and skin burned from the pepper spray. One of the occupiers washed out Harley's eyes with a bottle of water from his car. Harley later went to the beach and submerged himself into Lake Huron to seek relief from the burning. Two or three hours passed before the burning sensation subsided.

First Nations people accessed the camp from different locations. Marlin Simon, his brother Kevin, Wesley George, and Dale Plain (George) travelled on a road parallel to Highway 21 inside the army camp before entering the Parade Square. Tina George was a passenger in Rose Manning's car, as was Rose's son Bruce, Maynard T. George, and some older members of the community. They travelled on Matheson Drive and along Army Camp Road before entering the main gate of the built-up area. About thirty First Nations people accessed the built-up area in cars, including Glenn George, Clifford George, and people from other reserves such as Oneida and Walpole Island.

As Marcia Simon entered the built-up area and encountered military personnel, she instructed the officers to evacuate the barracks:

... I went over there and every one of them that I saw I told them that I – [want] you boys out of here. And to the female officers ... I told them, I want you girls out of here as well. This is our territory. Just said it calmly and told them what I wanted.

Other Aboriginal people who entered the built-up area also told the military they were taking over the barracks. Bruce Manning and Maynard T. George went to the guard shack to serve an eviction notice.

First Nations people, such as Marlin Simon, insisted they did not carry guns or firearms, nor did they see others carry weapons into the built-up area on July 29.

By the time the vehicles with First Nations people entered the Parade Square, the bus had already rammed the doors of the Drill Hall and had backed into the military jeep.

Captain Doug Smith had watched the school bus crash through the back gate off Army Camp Road as he stepped out his door at the base that Saturday afternoon to go jogging. The gate had been chained and blocked with large garbage bins. The decision of the Aboriginal people to plough through the gates and occupy the army barracks certainly caught him by surprise.

Captain Smith had no advance notice that First Nations people would try to assume control of Camp Ipperwash. In fact, he thought relations between the

military and the Stoney Point people were relatively good. The military were in the process of moving "assets" (office supplies, furniture, vehicles) out of Camp Ipperwash and consolidating plans for an environmental cleanup of the base in order to return the land to the Aboriginal people.

A meeting between Glenn George and Captain Smith had been arranged for August 1, 1995, by Robert (Bob) Antone. Another meeting had also been planned for August 26 to discuss the environmental cleanup of the military camp. It was to take place in a Native Circle on the Oneida Reserve (neutral territory) to be attended by Bruce Elijah and Bob Antone, members of Kettle and Stony Point Council, an OPP representative, the Kettle and Stony Point Police, and the military. Bob Antone, aware that Chief Tom Bressette did not want to participate in the meeting, planned to approach the Kettle and Stony Point Chief to encourage him to attend on August 26.

As Captain Smith made his way to police headquarters on the other side of the built-up area, he saw the front gate of the camp "being crashed ... by a number of Natives." First Nations people "swarmed" the military Commissionaires who tried to "control things" but "could not." Captain Smith then heard a call for assistance on the radio from MPs at the Parade Square that "sounded relatively serious." He "jumped on the back of an ATV" and instructed the military driver to take him to the Parade Square.

When Captain Smith arrived at the Square, he saw three military police officers "surrounded by a fairly hostile mob." The MPs had already deployed pepper spray "to keep the crowd back." One of the Aboriginal people who had been sprayed was "on the ground choking a fair bit." He seemed to be having a reaction to the chemical in the pepper spray.

Events were "escalating at a fairly rapid rate," and Captain Smith hoped he could defuse the situation. He instructed his officers to distance themselves from the First Nations people, and he positioned himself between the military police officers and the Aboriginal people. Captain Smith clearly wanted to avoid a physical confrontation between the Stoney Point people and his officers. Although his officers were armed, at no time did Captain Smith see firearms in the possession of the First Nations people. Captain Smith instructed the military officers to return to police headquarters.

The occupiers congregated in front of the Drill Hall. Captain Smith explained that he was the official in charge of the camp and proposed that the military and the occupiers have a meeting.

To de-escalate the confrontation, Captain Smith decided he would allow the "Natives" to occupy the church and other buildings in the immediate area. Captain Smith's objective was to "separate the forces and get control o[f] the situation." But



it soon became evident to Captain Smith that they “would not be able to hold this base”; things were “chaotic” and “mini confrontations” were occurring “all over” the base.

Bert Manning had a map that identified the barrack buildings. As First Nations people toured the built-up area, the occupiers noticed abandoned buildings that were not heated. Kevin Simon and others made it clear to Mr. Manning that these buildings were inadequate, particularly for the grandparents and Elders who intended to inhabit the army camp. Kevin Simon said:

... we basically told him, no, we're not going to settle for that ... [W]e've got old people here, a grandmother, and a lot of the Elders needed [somewhere] with heat and we're not going to settle for those rundown barracks that they basically [had] already abandoned ...

A meeting between the military and the occupiers was held in the Roman Catholic Chapel. The main purpose of the meeting was to resolve whether the military and First Nations people could coexist peacefully at Camp Ipperwash. Captain Smith tried to persuade the occupiers to inhabit some of the unheated buildings. It was becoming apparent to the Captain “just the way things were going ... [T]o try to come up with a plan to co-exist within the built-up area was just not tenable.”

At no point were First Nations people asked by the military to leave the built-up area.

## 7.4 The Military Contacts the OPP

Shortly before the meeting with the occupiers on the afternoon of Saturday, July 29, the military paged OPP Inspector John Carson at his home to inform him of the occupation of the army barracks. Inspector Carson, accompanied by Acting Detective Staff Sergeant (A/D/S/Sgt.) Mark Wright, travelled to Camp Ipperwash to meet with Captain Doug Smith.

Captain Smith told the OPP that the First Nations people, represented by Bert Manning, had ordered the military to leave the army camp. He described how the bus had rammed into the Drill Hall and into a military jeep. A vehicle belonging to an Aboriginal person continued to block the entrance to the main gate of the camp. Captain Smith explained that he had given the occupiers access to the Chapel and the Officers Mess to avoid further confrontation and physical damage. He estimated that there were approximately forty occupiers in the built-up area.

Inspector Carson told Captain Smith that it was necessary to inform the First Nations people that they did not have peaceful possession of the built-up area and that they were trespassing. He also made it clear that the OPP would not take any action regarding the army camp without a court injunction. Captain Smith responded that the military was not prepared to seek an injunction and would leave the army base if necessary.

Inspector Carson contacted Chief Superintendent Coles to inform him of the military's position on the injunction.

In a 5:15 p.m. call, Inspector John Carson told Captain Smith that the OPP was investigating the incident with the bus and jeep and that the damage would be photographed. He asked Captain Smith to notify Bert Manning that the OPP would be entering the built-up area of the army camp. The bus incident, "an overt criminal act," was of concern to Inspector Carson.

Inspector Carson knew that Captain Smith had met with Bert Manning who had agreed that the First Nations people would remain in the two designated buildings and would not forcefully enter any of the barracks at this time. During the afternoon and into the evening, Captain Smith tried to negotiate a coexistence agreement with the occupiers.

In a meeting with occupier Maynard T. George at 5:30 p.m., Inspector Carson himself made it clear that First Nations people did not have peaceful possession of the property and were trespassing. The occupiers, he cautioned, could be arrested and charged. Shortly after this meeting, Captain Smith informed the OPP that the "Natives" did not want the police to conduct an investigation of the bus incident.

Constable Wayde Jacklin was asked on the afternoon of July 29 to assemble the Emergency Response Team (ERT). ERT members were instructed to report to the OPP Forest Detachment. They remained at the Forest Detachment but were not deployed.

## **7.5 The Military Contacts a First Nations Negotiator**

Bob Antone received a call from Captain Smith on the afternoon of July 29. Mr. Antone was a First Nations negotiator, trained in conflict resolution and crisis management. He had been involved in the 1990 Oka crisis in Quebec. He and Bruce Elijah had also facilitated a cross-cultural awareness training session with the military on July 12 and 13, 1995 in an attempt to build a relationship between the Stoney Point people occupying the range and the military. Captain Smith told Mr. Antone that Stoney Point people were moving onto the army base. It was evident to Mr. Antone, from the "bit of panic in his voice," that Captain Smith was



“really concerned.” Mr. Antone himself was surprised that the Stoney Point people had occupied the built-up area.

Bob Antone, accompanied by Bruce Elijah, immediately set forth for Camp Ipperwash. Mr. Elijah, like Mr. Antone, was also a First Nations negotiator and peacekeeper from the Oneida First Nation. Bruce Elijah had been involved in numerous negotiations, including the Oka crisis, Wounded Knee, and Akwesasne in the 1970s.

When Mr. Antone and Mr. Elijah arrived at about 7:30 p.m., they met with Captain Smith. Tension between the military and First Nations occupiers was high. Soldiers stood on the north side of the Parade Square and the Aboriginal people were congregated on the south side. Captain Smith made it clear to Bob Antone and Bruce Elijah that he did not want a confrontation to develop between his soldiers and the Stoney Point people. He said valuables in the military buildings were in the process of being loaded onto trucks.

Mr. Antone and Mr. Elijah proceeded to make their way to the side of the Parade Square where First Nations people had assembled. The atmosphere was charged. The two men spoke with the Aboriginal group who were adamant that this was their land; they had no intention of leaving the army base:

... when we went over there they were all excited, they said they weren't going to leave and they said, "I don't care what you have to say ... we're not leaving and this is our land."... [T]here was a lot of excited energy ...

The negotiators talked with the occupiers for about an hour. They cautioned them not to initiate an altercation with the military. Mr. Antone said:

... make sure your people don't start fighting with the soldiers ...  
I [said], there's no reason to do that ... [Y]ou're in here right now.

Mr. Antone suggested they try to “work something out” with Captain Smith. He told the occupiers the military were in the process of removing their assets. But he did not know whether the military would leave Camp Ipperwash.

The negotiators relayed the sentiments of the Stoney Point people to Captain Smith. The occupiers were not likely to leave the camp; the only solution for the military is to “force them out.” Mr. Antone cautioned, “[Y]ou're going to have a fight if you try ... that's pretty obvious.”

Captain Smith again made it clear he did not want to be involved in a physical confrontation with First Nations people. Mr. Antone raised the promise made

by the federal government to return the land after the war when the Stoney Point Reserve had been appropriated in 1942. He urged the military to vacate the site. Mr. Antone said:

... they already said they were going to give it [this land] back. Well, why don't you just leave? [W]hy start a big fight here? ... [P]eople are just going to get hurt. [W]hat are you losing? ... [Y]ou got all your assets loaded up ...

The negotiators made it clear the Kettle and Stony Point Band had no control over the Stoney Point group. This had become evident to Captain Smith earlier that afternoon when he contacted Dick Bressette, an Elder at Kettle Point, to seek his assistance in de-escalating the situation at the army camp. The Stoney Point group refused to allow Mr. Bressette to enter the built-up area.

An issue of controversy is whether Bruce Elijah and Bob Antone told Captain Smith the Aboriginal people were armed. Although the Captain had not observed any weapons or firearms at the Parade Square or in other areas of the camp, he insisted Mr. Elijah and Mr. Antone told him the Aboriginal people had weapons. In fact, inscribed in Captain Smith's situation report is: "Bob Anton [*sic*] and Bruce Elijah conducted extensive negotiations and determined ... the SPG [Stoney Point Group] was armed ..." But Bruce Elijah insisted they never relayed this information to Captain Smith: "At no given time did we ... tell anybody ... that the occupiers were armed." "[T]here never was" any weapons; "I never s[aw] any." Mr. Antone also maintained that at no time did he convey to Captain Smith that the Stoney Point group had guns.

Mr. Antone offered to help the military evacuate the army camp and to ensure First Nations people did not interfere with the soldiers. Captain Smith decided to call his superiors in London/Ottawa for permission for the military to leave Camp Ipperwash. He believed that continued cohabitation could compromise the safety of both the occupiers and the military. Late that night, he received authorization to evacuate Camp Ipperwash.

The military informed the First Nations people that evening that they would be leaving the army base. Army officials said the buildings needed to be maintained, and caretakers of the camp were later introduced to the occupiers. In the following days, the occupiers received instructions on how to care for and operate the army camp equipment — to monitor the water tower, to ignite the pilot lights in the kitchen, and to operate the boilers.

The military's departure from the army camp occurred late that evening. Thirty to forty military personnel left from the main gate of the camp in



military and private vehicles. The base commander, Captain Smith, was the last to leave.

Bruce Elijah and Bob Antone remained with Captain Smith until all the military personnel passed through the army camp gates. By that time, more Aboriginal supporters had arrived and were congregating at the gate. The negotiators accompanied Captain Smith as he departed. The atmosphere was tense. In Mr. Antone's words, "Bruce and I both just stayed with the Captain ... we just stayed in between him and the Stoney Point people."

Vince George was one of the OPP officers asked to monitor the evacuation of the military personnel from Camp Ipperwash. Constable George, born and raised in Kettle Point First Nation, described the evacuation as an emotional experience: "[I]t seemed pretty emotional, exciting at that time; you know, yelling and hollering going on as the people [we]re filing out."

Constable Michael Dougan, another OPP officer on site when the Department of National Defence (DND) officials drove out of the camp past the crowd of First Nations people, described the experience as tense. Constable Dougan and other OPP officers remained outside the front gate of the army camp that night to ensure public safety and to keep the peace.

By 11:30 p.m., the military had vacated the army camp. The Department of National Defence made no attempts to re-enter the built-up area after the July 29 occupation.

Mr. Antone insisted that the Stoney Point people were not armed. They were simply angry. As the evening progressed, some of the occupiers began to consume alcohol and became less controllable. At no time did Mr. Antone see guns among the First Nations people.

Mr. Antone was aware of the schism between the Stoney Point group and the Kettle and Stony Point Band over the occupation of the military camp. Although the two groups shared the same purpose regarding the return of the reserve, they had different views on the tactics and strategies needed to achieve this objective. The Band wanted to continue to work with the military and the federal government to negotiate a return of the reserve land, while the Stoney Point group believed it was necessary, more than fifty years after the reserve had been appropriated by the federal government, to physically occupy the land.

Bob Antone and Bruce Elijah left Camp Ipperwash a few days after the occupation. They had no further involvement with the Stoney Point group until September 7, after Dudley George's death. As I discuss in the following chapters of the report, the OPP, unlike DND Captain Smith, did not solicit the assistance of these First Nation negotiators in early September when the Stoney Point

people occupied Ipperwash Provincial Park to help them initiate a dialogue with the occupiers, to determine issues of concern, or to ensure that tensions did not escalate between the police and First Nations people. On September 6, Cyndy Elder, a First Nations negotiator who specialized in mediation, contacted the OPP to offer her assistance in resolving the First Nations protest at Ipperwash Park.<sup>2</sup> Ms. Elder represented an organization called "Approaches Mediation." She had previously spoken to the OPP on August 15, after the army barracks occupation. Her offer on September 6 was not pursued by the OPP, who did not return her call. That evening there was a confrontation between the First Nations occupiers and the police. Dudley George died from gunfire discharged by the OPP.

It was just before midnight on July 29 when Inspector Carson learned that the military had left Camp Ipperwash. Inspector Carson also became aware that, over the course of the evening, some male occupiers had consumed alcohol and had become increasingly aggressive and confrontational. The OPP Incident Commander, Inspector Carson, was concerned that the aggressive acts perpetrated by First Nations people, namely the bus and jeep incident, prompted the military to leave the army camp to avoid further confrontations:

... it created some concern. Here we had the occupiers now taking over the built-up area. There had been a significant incident with the bus and the Jeep, [and it was] only by good fortune that someone wasn't seriously injured in that altercation. And as a result of that aggression, the military chose to withdraw from the military base to avoid further confrontations. There was discussion or comments made at that time that Ipperwash Park is next. And quite frankly it was causing me serious concern as to what kind of challenges it was going to create from a policing point of view. But I also knew, at that point in time, once that became public knowledge, what had taken place that day, and as the military vacated, that it was going to cause a tremendous anxiety in the broader community. And, I felt, also within the Kettle Point community, in regards to the potential return of the military base in the negotiation process with the Band Council proper.

Inspector Carson considered this "aggression towards the military," behaviour "significantly different than it had [been] up until that point in time." Comments were made that "Ipperwash Park is next." Inspector Carson thought that "this

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<sup>2</sup> Ms. Elder was from the Manitoulin area.



was the first time that the altercation became such that, quite frankly, people's safety was in jeopardy.”

Inspector Carson was concerned about the impact of the army camp occupation on the larger community. He also thought about the impact of the occupation on the Kettle and Stony Point Band, and whether it would negatively affect the Band's negotiations with the federal government for the return of the land.

Inspector Carson's prediction that problems would arise in the forthcoming months proved to be accurate: “I could see that this was really going to escalate the challenges that we were going to face on a whole host of issues.”

The mood of the occupiers was joyous after the barracks takeover. They had heat, water, access to showers, and a kitchen. As Clayton George, one of the occupiers, said, they were “[h]appy that [they] had the built-up area and hydro and water. And a place to shower too.” First Nations people began to decide which barracks they would make their home. Marlin Simon moved into the Sergeant's Mess (Building 34), which since that day has been his home. Marcia Simon chose the Roman Catholic Chapel (Building 46) for herself and her mother, Melva George. Roderick George selected the Quarters Building (Building 37) for his family which they continue to live in to the present day. But Clifford George, who had served in the Canadian military for a number of years, was not interested in moving into the army barracks: “I said, no way I'm going to go move into them. I lived in them too long.”

Several First Nations people moved into the army camp after July 29, 1995. Warren George, who brought his belongings to the barracks the next day, was “glad not to be living in a tent over the wintertime again.” Fourteen-year-old J.T. Cousins moved into the barracks without his parents. A number of people from other reserves and areas also moved into the army camp in the first few days of August 1995.

Dudley George, who was not part of the initial group that occupied the built-up area on July 29, 1995, made his home in the ORS Quarters (Building 115). He lived there until his death on September 6, 1995, just over one month later.

Marlin Simon could not sleep the night of July 29 because of his excitement. He and others thought the military would be much more resistant to the First Nations occupation. Mr. Simon, like his fellow occupiers, was elated that they “finally got the land back.” He explained:

It was just the military was gone, and it just seemed like [we] finally got the land back from the military ... It just seemed like something that was way distant ... [it] just never really seemed like [we] were going to get the land back. And then finally it just seemed like we had the land back.

## 7.6 July 30, 1995

At 9:20 a.m. on July 30, OPP Inspector Carson updated Chief Superintendent Coles on the occupation. Questions were raised about the 1942 Order-in-Council and whether the land was to be returned to the occupiers or to the official Band at Kettle Point. The police did not know the leader or spokesperson of the occupiers. Bert Manning seemed to be the occupier most involved in communicating with the military and the OPP. It was decided that Ron Fox, Special Advisor on First Nations in the Deputy Solicitor General's office, should be provided with updates on the occupation.

That morning, Inspector Carson met Lieutenant Colonel Sweeny at the Forest Golf and Country Hotel. The military official made it clear that DND had not turned over the land to the Aboriginals and that the military had left Camp Ipperwash purely for safety reasons. The Ministry of Natural Resources (MNR) was to be contacted because the water supply to the base came from a reservoir in the park.

MNR officials were clearly worried on July 30 when they learned the Stoney Point people had occupied Camp Ipperwash and the military had evacuated the army base. Assistant Park Superintendent Don Matheson and Peter Sturdy of MNR (Zone Manager for Southwestern Ontario) discussed some of their concerns in a call shortly after 9:00 a.m.

There was anxiety about both the supply and quality of water to Ipperwash Park after the First Nations army camp occupation. MNR had an arrangement with the Department of National Defence whereby water was pumped from Lake Huron to the park, treated, and transported to a water tower at the army base. The water was then re-routed back to Ipperwash Park to provide potable water for campers and other park users. Peter Sturdy and MNR park officials were worried that 1) the water supply could be cut off by the Aboriginal people, or 2) "through some accident ... or operation of the water tower that there may be a contaminant or some impurity" in the water. Later that morning, Don Matheson discussed these concerns with Inspector Carson and Superintendent Parkin at the OPP Forest Detachment.

At the request of Chief Superintendent Coles, Superintendent Parkin visited the OPP Forest Detachment on July 30 and was briefed by Inspector Carson and A/D/S/Sgt. Wright. Staff Sergeant Bouwman relayed comments from Constable Parks to the effect that, as the military were leaving the previous night, occupiers said Ipperwash Park was next. Inspector Carson was developing a plan for uniformed two-person officer patrols of Ipperwash Park on a twenty-four-hour basis. Arrangements were being made for undercover officers disguised as campers to remain in the park to gather intelligence. Superintendent Parkin thinks Assistant



Park Superintendent Don Matheson, who joined the meeting, may have been privy to this information.

Detective Constable Martin arranged the logistics for the OPP officers to camp at the provincial park. He rented a trailer that he, Detective Constable Dew, Sergeant Eve, and Provincial Constable Karen Dunn would use during their stay at the park. These officers were told their purpose was twofold: to gather intelligence and to ensure the safety of the public.

At the request of the OPP, MNR officials made arrangements for accommodation of the Emergency Response Team at Pinery Provincial Park.<sup>3</sup>

An issue of great concern to MNR that day was the possibility that the park itself would be the target of an Aboriginal occupation. Military officials, in a meeting with Inspector Carson, Superintendent Parkin, Detective Constable Speck, and Assistant Park Superintendent Don Matheson, reported that as they evacuated Camp Ipperwash on the night of July 29, an Aboriginal man made a statement to the following effect: “[T]ell your buddies at the park that they are our next target.” This was the first direct threat of an occupation of Ipperwash Park received by MNR officials that summer. When Park Superintendent Les Kobayashi met Assistant Park Superintendent Don Matheson at the park maintenance building later that evening, Mr. Matheson’s “concerns for the safety of our staff” and for the campers in the park were very evident.

A/D/S/Sgt. Wright was also well aware on July 30 of the possibility of an occupation of Ipperwash Park by the Aboriginal people. He inscribed in his notes:

Information from informant that Natives had weapons and also planned to take the park. Decision was that there may be a likelihood of attempt to take Ipperwash Provincial Park ...

A/D/S/Sgt. Wright knew that the Aboriginal people were hunters and had rifles. But he was not concerned and did not “think it was anything ominous.”

Inspector Carson made preparations for twelve ERT officers to travel to the area. Discussions took place in the afternoon between Inspector Carson, Superintendent Parkin, and Chief Superintendent Coles regarding the twenty-four-hour patrols in the Camp Ipperwash area. Inspector Carson sent an e-mail to all officers in the areas of Kent, Essex, and Lambton to alert them to the situation in the event that their presence was required at CFB Ipperwash:

The military has not as yet given up claim to the land ... Our concern is now that of the adjacent properties, in particular Ipperwash Provincial

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<sup>3</sup> Pinery Provincial Park is about a 10-minute drive from Ipperwash Park.

Park. An integrated response has been put in place. I am the Incident Commander in this matter. Superintendent A. Parkin, who is the Superintendent in charge of operations for West Region, is in overall command of the incident. Chief Superintendent Coles of West Region is also aware of the situation, and has been involved in the implementation of a plan regarding our response to a deterioration in the situation in and around CFB Ipperwash and Ipperwash Provincial Park.

Inspector Carson instructed A/D/S/Sgt. Wright, Staff Sergeant Bouwman, and Detective Constable Speck to initiate communication with the occupiers of the army base. Several times that day, the OPP officers stood at the main gate of the camp and tried to engage the First Nations people in a dialogue. At about 7:00 p.m., Bruce Manning, one of the occupiers, exchanged a few words with Staff Sergeant Bouwman. He said a First Nations spokesperson had not yet been chosen to communicate with the OPP or the military.

That evening, Inspector Carson updated Mayor Fred Thomas on the occupation.

At 10:00 p.m., Staff Sergeant Bouwman related to Inspector Carson by telephone a conversation he had had with Carl George. He had been advised a meeting would be held at Kettle Point and of the Band's disapproval of the army camp occupation. Carl George indicated that Les Jewell was organizing a meeting at Glenn George's residence with "other radicals."

## 7.7 July 31, 1995

At 10:15 a.m., MNR employee Don Matheson, Assistant Superintendent of Ipperwash Park, requested a meeting with Inspector Carson as soon as possible. Shortly thereafter, Park Superintendent Les Kobayashi and Don Matheson arrived at the OPP Forest Detachment. They discussed the possibility of a park occupation and whether MNR would seek an injunction in such circumstances.

Inspector Carson had a meeting with MPP Marcel Beaubien that afternoon, who had earlier communicated to Staff Sergeant Wade Lacroix that he was "supportive of police action." Mr. Beaubien told Inspector Carson he was contacting the Attorney General and the Solicitor General regarding First Nations people in the West Ipperwash area.

As I discuss later in this chapter, Marcel Beaubien sent a letter on July 31 to Attorney General Harnick that discussed the tension in the West Ipperwash area and the concerns of his constituents: "Residents are stressed out and the situation is becoming unbearable." Mr. Beaubien also wrote: "Law enforcement is basically non-existent and the OPP does not seem too keen in getting involved."



This letter was copied to Solicitor General Robert Runciman and Mayor Fred Thomas of Bosanquet. Marcel Beaubien testified that there was “talk in the community that people would arm themselves and look after their own property,” which “created an awful lot of concern with me.”

Inspector Carson assigned four OPP officers (two male, two female) — Detective Constable Dew, Sergeant Eve, Detective Constable Martin, and Provincial Constable Dunn — to the park disguised as campers. They used campsites and a camper trailer. The officers were asked to collect information on the people and vehicles entering and leaving the area. This information was provided to administrative staff at the OPP Forest Detachment who entered it into a log.

Uniformed ERT officers were also deployed to Ipperwash Park and the area surrounding CFB Ipperwash. The ERT, stationed at Pinery Provincial Park, was to provide twenty-four-hour coverage. Inspector Carson said, “[O]ur objective was to the degree possible have a constant uniform presence within the park or very close by.” Some of the officers, Carson said, “literally camped in Ipperwash Park for the month of August” so there would be “eyes and ears in the park.”

Shortly after 10:00 p.m., A/D/S/Sgt. Wright relayed information to Inspector Carson from Detective Constable Dew. Campers, he said, had been harassed by First Nations people who claimed Ipperwash Park was “Native” land and would be in their possession in a short time. Detective Constable Dew reported the following conversation between Dudley George and an elderly couple:

DUDLEY: Get off our land.

CAMPER: This is a Provincial Park.

DUDLEY: This is Indian lan[d]. On[e] day, if not this year, next year, you’ll be paying us to camp here ’cause we’re takin’ this over, then we’re takin’ the Pinery.

Inspector Carson arrived at the provincial park at 11:30 p.m. to meet with Detective Constable Dew and Sergeant Eve. Several vehicles operated by Aboriginal people travelled back and forth between Matheson Drive and the beach. They were driven in an erratic manner and First Nations people were yelling from the vehicles.

Late that evening, a fatal car accident occurred at the intersection of Matheson Drive and Army Camp Road. A car travelling at high speed on Matheson Drive drove through a stop sign and into a deep ditch. Constables Jacklin, Dougan, and Parks were on patrol at Ipperwash Park and the area surrounding the military base. The officers rushed to the site. Constable Parks waded through four feet of water to remove the occupants from the car. Two Aboriginal adults, a male and a female, were dead. Two passengers survived. An ambulance was called.

First Nations people began to congregate in the area. People were distraught over the loss of their relatives and friends. Bert Manning appeared from the army camp with a young girl, the daughter of the deceased woman. He wanted to show the nine-year-old girl her mother's body. Constable Jacklin thought the child was in "shock." He persuaded Mr. Manning and a woman, whom he believed was Mr. Manning's partner, that it was not advisable to show the child her deceased mother. Constable Jacklin drove the girl and the woman away from the accident to the main gate of the built-up area on Army Camp Road. A sweet grass ceremony was performed by First Nations people at the site of the accident.

Inspector Carson and A/D/S/Sgt. Wright drove to the accident scene at 2:00 a.m. They saw the car in the ditch, and the victims on the side of the road. From a distance, they watched the Aboriginal sweet grass ceremony.

The following day, OPP Officers Wright, Bouwman, and Speck met with Glenn George at the main gate of Camp Ipperwash to discuss the double fatality. Glenn George was co-operative and concerned about the accident on Matheson Drive. It was agreed that each night MNR would lock the gate on Matheson Road to prevent cars from driving on this dark roadway. They also agreed to issue a joint press release regarding R.I.D.E. checks to be instituted as a result of the accident. The press release in part said:

It is the position of the Aazhoodenaang Enjibaaig (Stoney Point People) that all community members live together in peaceful, lawful harmony.

The Aazhoodenaang Enjibaaig (Stoney Point People), in the interest of public safety, are in support of the Ontario Provincial Police conducting R.I.D.E. Programs around the Ipperwash area. The Aazhoodenaang Enjibaaig (Stoney Point People) support safe driving practices and activities.

Glenn George also mentioned to Officers Wright, Bouwman, and Speck that people from outside the community were coming into the area. Staff Sergeant Bouwman thought Mr. George was somewhat uneasy that these "outsiders" could possibly stir up trouble in the Ipperwash area.

Glenn George asserted that Matheson Drive and Ipperwash Park belonged to the First Nation people, and an Aboriginal burial ground was on the park land. Inscribed in Detective Constable Speck's police notes: "Glen laying claim to Matheson Dr. + Ipperwash Prov. Park saying there is a gravesite in park."

This was the first time Detective Constable Speck learned that burial grounds in Ipperwash Park was a basis for the Aboriginal claim to this land. Nevertheless, the OPP officer does not "recall doing anything with the information."



7.8 “Outsiders”

There was clearly concern amongst members of the Kettle and Stony Point Band, as well as the OPP, that First Nations people from other reserves and areas were in the army camp. Aboriginal people from Oneida, Walpole Island, and Moraviantown came to offer support, as did people from Michigan and other areas in the United States. Some of the “outsiders” wore camouflage outfits.

Aboriginal men such as Gabriel Doxtator from the Oneida Reserve came to the built-up area for an occasional visit in August 1995. Other people, such as Isaac Doxtator and Russell Jewell, were more regular visitors. Isaac Doxtator often stayed with Glenn George. Robert Isaac and Les Jewell moved into the barracks with the Stoney Point group after the occupation of the barracks.

Band Councillor Gerald George went to the army camp in early August to try to determine the number of non-Band members occupying the army camp. He worried these “outsiders” were radical in their thinking and would likely influence the younger and more impressionable people from the Band. He also worried that they supported a separatist movement, namely, the separation of the Stoney Point group from the formal Band. Gerald George was particularly concerned about Les Jewell who came from the United States: “[H]e was giving the people the wrong message ... Just to keep pushing ahead, like, aggressively.”

As is discussed later in this chapter, OPP officers on patrol at Ipperwash Park and the perimeter of the army camp also noticed an increase of First Nations people from other areas including the United States driving into the barracks.

7.9 The Kettle and Stony Point First Nation Band Meeting — August 1, 1995

A Band meeting of the Kettle and Stony Point First Nation was held on August 1, 1995, to address the army camp occupation. The meeting began at 7:00 p.m. and lasted more than four hours.

Chief Tom Bressette led the meeting, which was attended by the following Councillors:

Bob Bressette	Al Bressette
Bernard George	Brian Monague
Norm Shawnoo	Gerald George
Yvonne (Bonnie) Bressette	Steve Wolfe
Bud George	Liz Thunder, Band Administrator

The Chief and most of the Councillors had connections to the Stoney Point Reserve. Bonnie Bressette’s parents lived at Stoney Point before the appropriation,

as did Chief Tom Bressette's grandmother. Elizabeth Stevens (Thunder) also had family from the reserve, and Bob Bressette had land there.<sup>4</sup> Bernard George, Norm Shawnoo, Gerald George, and Al Bressette had relatives from Stoney Point. Chief Bressette said, "Pretty much everybody here has relatives at Stoney Point."

Community members of the Kettle and Stony Point Band were also present and participated in the discussion. The purpose of the meeting was to search for a constructive way to resolve the differences between the Band and the Stoney Point occupiers. Band Administrator Elizabeth Stevens described the meeting as tense and emotional.

It is clear from the transcribed minutes of the meeting that both Chief Bressette and Carl Tolsma were concerned about the division of the Band and the Stoney Point occupiers. In his opening words, Chief Bressette said:

... I have had meetings with Carl; he has been in touch with people who have strong feelings about Stony Point. We want to explore possibilities, to try to draw people back together. It is a difficult issue to disagree with your own people. I have not stood up and said that I support what is being done ...

This is an issue we all hold very deep, an issue our community has struggled with for over [fifty] years ... There has been a lot of hurt feelings, a lot of resentments, we should let go of those.

There was concern that if Band members and the Stoney Point occupiers remained divided, this would hinder future negotiations with the federal government for the return of the reserve. Carl Tolsma said, "[T]he government will not talk to anyone that's arguing ... [T]his is the whole scheme, in my opinion, that the government is looking for." Chief Bressette made similar remarks:

Our people cannot remain separated over this; it plays into the Government agenda.

Members of the Kettle and Stony Point Band were concerned about the presence of non-Band members at the army camp. They said "outsiders" prevented them from accessing the military camp and sitting at the beach.

Gerald George was anxious that individuals from the Iroquois Nation were amongst the leaders of the army camp occupation: "We are Anishnabe ... and there is an Iroquois flag flying down there." Unlike Kettle and Stony Point,

<sup>4</sup> The Indian Department wanted all reserves subdivided into individual lots. Families were given a location ticket, which was a permit to use a particular piece of land.



members of the Iroquois Nation were not part of the Three Fires Confederacy. There was concern about the potential for violence because of the “outsiders” who were actively involved in the army camp occupation. Band members did not want people from other communities on these lands because they feared they might “fall into some kind of difficult problems such as what existed in Oka.”

Not every Band member shared this view. Bonnie Bressette, former Chief of the Kettle and Stony Point Band from 1988–1990 and a Councillor in 1995,<sup>5</sup> discussed the support traditionally given to First Nations people by members of other reserves. Not only was she not concerned about the presence of these non-band members, Ms. Bressette was in fact grateful for their support. As she explained at the hearings:

... when there's a time we can just set aside everything. If we have to go to Oneida and support Oneida Nation, that's what it is because that's the way our people [a]re and always will be. We don't just say, well that's them down there. If something is need[ing] supporting at Walpole Island, we will go to Walpole Island. And this is what the people from other First Nations heard and they wanted — they would come to visit at Stony Point, spend some time there and support our people that w[ere] there ...

But, I don't look at them as — never, ever looked at them as strangers. They were people that came there to support. And I'm never, I can never say enough or express my thanks and my pride in the people that did take the time.

Chief Tom Bressette agreed that Aboriginal people often travel to another First Nation to provide support. Yet there were concerns that an “Oka” situation could develop and safety could be jeopardized as a result of the presence of these “outsiders.” People at Kettle Point, particularly the Elders, were upset that individuals from other First Nations were telling them they could not be on Stony Point land. As Chief Tom Bressette said, “if you're from Kettle Point you weren't welcome” but

... if you were from anywhere else, the door was wide open and the people who were wanting to go there were people that actually were the descendants of the people that had location tickets there.

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<sup>5</sup> Bonnie Bressette had been a Band Councillor since 1968, with the exception of the two years that she was Chief of the Band.

To address what many people perceived as the problem of “outsiders” at the base, Chief Bressette and the Band issued a press release and drafted a letter to the occupiers.

### **7.10 The Band’s Press Release and Letter to the Occupiers**

On August 2, 1995, a press release was issued by the Kettle and Stony Point Band. It tried to convey some of the views expressed at the Band meeting the previous night. It made clear that the return of the Stony Point lands was an immediate objective. This included full compensation by the Department of National Defence for the cost of “cleaning and restoring the lands and environment at Stony Point.”

The press release also emphasized that the people who had been at the meeting wished to work in tandem with the occupiers to attain this objective: “to reunify a community torn apart by the illegal appropriation and continued use by the military” of their land.

And finally, it stated that “outsiders” or non-Band members were not welcome and should leave the army camp:

It was the general consensus of those present [at the August 1, 1995, meeting] that non-Band members in occupation at Camp Ipperwash should be thanked for their support but should be asked to leave Stony Point, as it is not now, and never was, their home. We believe that without the presence of disrupting, outside influences, the Kettle & Stony Point First Nation will be able to continue negotiations with the Department of National Defence for the expeditious clean-up and return of the Stony Point lands.

On August 3, 1995, Chief Bressette (on behalf of the Band), wrote a letter directly to the Kettle and Stony Point Band members who were occupying the military camp. Most participants at the August 1, 1995, Band meeting, he said, wanted people from other First Nations to leave Camp Ipperwash; they “feel the non-Band members occupying the Stony Point lands should be thanked for their support and respectfully asked to leave.”

The Chief stressed that the federal government “will only deal with this Council” and, therefore, it was important that the occupiers work in conjunction with the formal Band. He said a “Statement of Principles for Negotiating the Return of the Stony Point Lands” had been developed and he invited comments on this document. The seven principles are listed:

1. We are committed to seek the return and restoration of the lands and environment at Stony Point.



2. We are committed to seeking compensation for the Stony Point locatees and will attempt to formulate a workable plan with respect to how such interests will be dealt with and how those members' distinct and separate interests will be reflected in decisions respecting Stony Point lands. It is also recognized that all Stony Point locatees and their descendants have unique family and historical interest in Stony Point therefore assuring those members as having a distinct interest which is to be reflected and addressed in the decision making process with respect to the return and development of the Stony Point lands.
3. We are committed to full, open and frank community discussions and consultation with respect to any negotiations which may take place with Canada concerning the lands at Stony Point. All members are free to participate in this joint community process and/or committee work for the benefit of all. In particular, all members will be asked to co-operate during environmental assessment and clean up operations.
4. We are committed to representing the interests of all members of the First Nation, with no special treatment or separate consideration to be given to any particular member or members, however, Band Members who advance their personal interests independently of our community interests are to be respected for their differences of opinion.
5. We are committed to making all reasonable efforts to heal the divisiveness caused to this First Nation by the wrongs inflicted by Canada in their taking of the Stony Point lands.
6. We are committed to negotiating a fair and reasonable compensation package that will include restitution for all that the members lost due to the wrongful taking of the Stony Point lands.
7. We are committed to working together and respecting one another through these principles as outlined above.

Chief Bressette and several Band Councillors, including Gerald George, delivered a large stack of copies of this letter to the gatehouse at the army camp. The Chief asked to speak to someone in charge of the occupiers, but was told there were no spokespersons, and that their presence was not welcome. The Chief and Councillors left the letters at the army camp gatehouse with a request that they be disseminated to the occupiers. But the Stony Point people refused to accept the documents and threw a pile of letters into the rear of Councillor Al Bressette's truck.

Chief Bressette went on vacation shortly after August 3. Prior to leaving, he received a call from the office of the Assembly of First Nations. Ovide Mercredi, the National Chief of the Assembly of First Nations, offered to mediate differences between the occupiers and the Band if Chief Bressette thought it would be of assistance. But Chief Bressette had been told the occupiers would not be receptive to this offer.

It was not until September 6, after the death of Dudley George, that National Chief Mercredi was again in contact with the Kettle and Stony Point First Nation.

### **7.11 Captain Smith Becomes the Military Liaison Officer**

After the occupation, Captain Smith was assigned the role of military liaison officer. His responsibilities were to ensure that channels of communication remained open between the occupiers and the military. In addition, he was to instruct the Stoney Point group on the operation of the equipment, materials, and "plant infrastructure" to ensure it did not get damaged and that First Nations people did not "hurt themselves."

The day after the occupation, Captain Smith met with Mr. Antone and Mr. Elijah. Among matters discussed was the appointment of a spokesperson for the Stoney Point group to negotiate and discuss issues of concern with the military liaison officer.

Captain Smith made arrangements to enter the camp in the first few days of August to show the occupiers how to operate the hydro and water systems. Danger signs warning of unexploded ammunition were to be posted, and the Aboriginal people would be given a talk on measures to be taken if they encountered live ammunition.

Military patrols outside the army camp continued after the occupation on Matheson Drive, Outer Drive, Army Camp Road, and Highway 21. Captain Howse participated in the patrols with the military police. He also distributed pamphlets to the local population, notifying residents of the occupation of the base and the evacuation by the military from the army camp.

Captain Smith believes it was through his interactions with the Stoney Point people in August 1995 that he established a relationship with the occupiers. This explains why the Captain offered his assistance to OPP Incident Commander Carson on September 6, 1995, after the Stoney Point people occupied Ipperwash Provincial Park. As will be discussed, Inspector Carson was hesitant to accept the assistance of Captain Smith. Unfortunately and tragically, there was a confrontation between the OPP and the First Nations occupiers that night in which Dudley George was fatally shot.



## 7.12 Did the Occupiers have Firearms at the Army Camp?

In an OPP briefing, Inspector Dale Linton reported on a meeting between Captain Smith and Chief Bressette on August 3, 1995. According to the police report, “Chief Bressette said he believed there are high powered weapons on the base such as AK47s.” The report cautioned that this information had not been confirmed although gunshots had been heard.

Chief Bressette denied he told an OPP officer that he believed there were high-powered weapons such as AK47s on the base. He insisted he had simply reported that he had received calls from people living in his community who claimed they saw someone carrying military weapons. Chief Bressette insisted, “I never attributed it to being fact ... I just said, this is what was told to me.”

Aboriginal witnesses, such as Marcia Simon, Wesley George, Stewart George, David George, and Tina George, said they did not see any firearms in the built-up area. Clifford George also testified he did not see such weapons carried by the occupiers nor did he hear gunshots fired from the army camp.

Isaac Doxtator from Oneida also insisted that he did not bring guns into the army camp nor was he requested to do so by First Nations people. Like other witnesses, he confirmed he did not see Aboriginals carrying arms in the area.

But people such as Marlin Simon did occasionally hunt on Camp Ipperwash lands. Mr. Simon owned a semi-automatic gun and other hunting rifles in 1995 at the time he lived in the barracks, as did Warren George.

Inspector Carson knew First Nations people hunted, but did not think the occupiers in August 1995 would threaten his officers with a gun. They had not threatened the police with firearms in the past.

## 7.13 Ontario Native Affairs Secretariat (ONAS) Learns of the Occupation at Camp Ipperwash

It was as a result of telephone calls from Scott Patrick and Ron Fox from the Deputy Solicitor General’s office, that Julie Jai, (Acting) Legal Director of ONAS, decided to convene a meeting of the Interministerial Committee (IMC).

On July 31, 1995, two days after the takeover of the army camp, Scott Patrick informed Ms. Jai that a “Native group has stormed the gate at Camp Ipperwash.” His superior Ron Fox provided details of the occupation the following day.

Mr. Fox explained that a dissident group, not the Kettle and Stony Point Band, had assumed control of the army base at Camp Ipperwash. The Band did not support the occupation and was having a meeting that evening to discuss its response to the actions of the occupiers. The military had evacuated the army camp and First Nations occupiers had cut the phone lines, which had disrupted the

water system in the adjoining provincial park. Ron Fox had acquired this information from Superintendent Parkin and Inspector Carson.

First Nations occupiers, Mr. Fox explained, claimed that a sacred site existed in the provincial park. The previous night, campers had heard Aboriginal people say, "[P]retty soon you'll be paying us for the use of the park." This was not the first time the OPP had heard comments about the plans of First Nations people to assume control over the provincial park.

Ron Fox informed Ms. Jai that the OPP were closely monitoring the situation and likely had officers in the park disguised as campers.

Another recipient of OPP information was Barry Jones, Legal Director of the Ministry of Natural Resources. On August 1, he contacted Ms. Jai to inform her that the Minister of Natural Resources was concerned about the safety of campers in the provincial park and questioned whether the park should be closed. Mr. Jones reported that there were four undercover OPP officers in Ipperwash Park and a SWAT team nearby. Both Ms. Jai and Mr. Fox thought MNR officials were unduly concerned about the safety risk in the provincial park.

According to Julie Jai, Mr. Jones likely received this information from Peter Sturdy of MNR, who in turn had obtained operational information from the police. MNR staff and the OPP had met on July 30, the day after the Camp Ipperwash occupation, to review the incident. Mr. Sturdy learned the OPP had brought in an Emergency Response Team (ERT) that was stationed at Pinery Provincial Park, that there were undercover police in the park, that approximately six officers were scheduled for night duty, and that there would be twenty-four-hour coverage "for the foreseeable future." Minister Hodgson was also told in early August that undercover officers were in the park disguised as campers.

On August 1, Julie Jai alerted senior management at ONAS of the possible takeover of the provincial park, and of a meeting of the Interministerial Committee scheduled for the following day.

Ms. Jai, the Chair of the IMC, did not have a good understanding of the history of the army camp, nor did she know whether land claims existed for the provincial park. She decided to have research done on these issues prior to the IMC meeting. It soon became clear to Ms. Jai that the reason for the occupation was the long delay of the federal government in returning the army base to First Nations people.

## **7.14 The August 2 Interministerial Meeting**

The August 2 Interministerial Committee meeting on Aboriginal Emergencies: "Ipperwash Park" was the first IMC meeting chaired by Julie Jai. It was at the



discretion of the Chair when to convene a meeting of the Committee and who to invite.

It was the practice at that time to have political staff and civil servants attend IMC meetings. Political staff typically gathered information to brief their respective Deputy Ministers or Ministers on the discussions and recommendations put forward at these meetings on Aboriginal issues. Among the people who attended the meeting held in the ONAS boardroom the afternoon of August 2 were:

Elizabeth Christie	(MAG Lawyer Civil)
David Moran	(EA to Attorney General Harnick)
Ron Fox	(Ministry of the Solicitor General)
Brent Laschinger	(Premier’s Office)
Barry Jones	(MNR)
Peter Allen	(MNR)
Jeff Bangs	(EA to Minister of Natural Resources Hodgson)
Peter Sturdy	(MNR)
Ron Baldwin	(MNR)
Dave Carson	(ONAS)

Brett Laschinger attended the IMC meeting on behalf of Deb Hutton of the Premier’s Office.

Peter Sturdy and Ron Baldwin from MNR participated by conference call. Lead ministry personnel on the ground often joined the meetings by telephone. As Ministry of the Attorney General (MAG) lawyer Elizabeth Christie explained, the goal was “to get the best information we could. And the best way to do that, everybody understood, was to have the ministerial people who were actually dealing with the issue who were in the location.” Mr. Sturdy, who was attending an IMC meeting for the first time, did not have prior knowledge of the powers and responsibilities of the IMC.

Ron Fox had asked Superintendent Parkin earlier that day whether he or Inspector Carson would be interested in participating in the IMC meeting. Superintendent Parkin declined the offer and told Ron Fox he was too busy. The OPP Superintendent did not consider whether it was inappropriate for operational police to be involved in this government meeting.

The purpose of the August IMC meeting was to gather information and develop recommendations on the Camp Ipperwash takeover by the Stoney Point Group, as well as to discuss the possibility of this group occupying Ipperwash Provincial Park.

Background information prepared by ONAS was distributed to the participants. It included historical information on the park and the army camp, as well as maps demarcating the former Stoney Point Reserve, the provincial park, and West Ipperwash Beach. The Procedures for Dealing with Aboriginal Emergencies were also enclosed: it included the power to appoint a negotiator, to develop recommendations that included legal action, and the responsibility of the committee to ensure that there was adequate communication with affected communities.

Prior to the meeting, Mr. Fox and Ms. Jai exchanged further information on the occupation. The OPP had met with Glenn George, a spokesperson for the occupiers, who had confirmed the claim by First Nations people of a burial ground in the park. Ms. Jai and Mr. Fox also discussed the August 1 Kettle and Stony Point Band Resolution asking the occupiers to leave the camp. The offer by Ovide Mercredi to mediate the occupation of the military base, as well the involvement of Bob Antone from Oneida as an intermediary, were also topics of discussion between Mr. Fox and Ms. Jai.

At the beginning of the IMC meeting, the historical material on the park and the army camp were briefly reviewed. ONAS confirmed that there was no formal land claim on Ipperwash Park.

Ron Fox gave an update of events. He believed his role at the IMC meeting was to provide information from a policing perspective of events "on [the] ground." He did not function as an operational police officer on his secondment to the Solicitor General. His title at the Ministry was Special Advisor, First Nations. On the cover sheet of the minutes of the meeting faxed by Julie Jai to attendees, Ron Fox is designated as "OPP" and not staff in the Deputy Solicitor General's office.

Ron Fox described the July 29 occupation by the Stoney Point group, namely the bus incident with the army jeep and the use of pepper spray by military personnel. He explained that the military decided to leave the camp to avoid a confrontation with First Nations people. The loss of water pressure as a result of the cut telephone wires was also discussed. An alternate manual pumping system was being installed to rectify the situation.

Approximately fifty to seventy-five First Nations people, IMC members learned, were currently occupying the camp. No weapons had been observed by the OPP. Lack of support by the Kettle and Stony Point Band of the occupation as well as the Band Resolution were also mentioned.

Mr. Fox raised the threat of a takeover of Ipperwash Park. According to the minutes of the meeting:

Since the occupation of the base itself, some members of the Stoney Point group have implied that they may try to take over the Ipperwash



Provincial Park. Members have allegedly made comments to campers such as “next year you’ll be paying us to use the park,” and a similar comment was supposedly made to military personnel as they were vacating the camp.

The OPP and MNR were monitoring the park and the army base perimeter, IMC members learned. Mr. Fox conveyed OPP operational information when he told the government committee that two OPP Emergency Response Teams were stationed nearby as well as a Tactical and Rescue Unit (TRU). Such information, Mr. Fox acknowledged at the hearings, is tactical or operational and should not have been divulged to the IMC:

The numbers and types of police resource and personnel, in my opinion, are tactical in nature. They would speak to how an operation the police might undertake may be carried out and shouldn’t be there.

MNR officials offered their perspective on the situation. Peter Sturdy was concerned about a park occupation and in particular, comments made by Aboriginal people that “soon you’ll be paying us for the park,” and “you can tell your friends at the park that they are next.” This was indicative of a real threat to MNR property, he said. Peter Allen of MNR suggested that an assessment of the risk to public safety and the obligation of the government to campers in the park be undertaken, as well as possibly closing the park.

Ron Baldwin of MNR responded that Chief Bressette, who considered the occupation illegal, would be upset if the park was closed as it would validate the acts of the dissident Aboriginal group. Mr. Fox said that although it was a possibility, he thought it unlikely First Nations people would assume control of the park.

Committee members agreed that OPP and MNR staff on site were in the best position to evaluate the risk; “[c]losing the Provincial Park, at this point, would be extreme.” Public safety was the “foremost consideration,” and MNR and OPP staff would continue to develop contingency plans to prepare for a possible emergency.

At the close of the meeting, IMC members agreed to keep in close communication and apprise one another of further developments. Political and civil servant staff would brief their respective Deputy Ministers and Ministers. It was decided the IMC would only meet again “if an actual incident at Ipperwash occurs,” such as the occupation of the provincial park.

As MAG civil litigation lawyer Elizabeth Christie said, “[i]t was a watch and see outcome ... [T]here wasn’t any sense that there was enough of any kind of

threat to justify any specific action; that we would watch and see what happened.” Julie Jai agreed that the IMC decided to “not really do anything” for what was perceived to be a low-risk situation:

... we didn’t even know if the park was going to be occupied. We didn’t know what the alleged basis for the claim of the park was, and that the decision was just to not really do anything, just to monitor the situation until the park was actually occupied ... [T]his seemed like a fairly low-risk situation to us, even if the park was occupied, and there were several other emergencies brewing at the time that seemed potentially more serious.

Ms. Jai knew that in the past few years, First Nations people had been permitted to enter the park to perform ceremonies. There had been no major incidents, which explained in part the view that there was minimal risk to public safety. As Ms. Jai said:

... that had happened before without any major incident. So, this is something that Ron and I both knew, so I think our view was that there could well be an occupation of the park, but that we felt that the risk to the public was low because the park would be closed at that point.

Dave Moran, Executive Assistant (EA) to Attorney General Harnick, and Jeff Bangs, EA to Minister of Natural Resources Hodgson, learned at the August 2 meeting the history of the area and the frustration of “Native” communities for the past fifty years following the 1942 federal appropriation of the Stoney Point Reserve. They considered the meeting an information briefing. They, too, had no sense of urgency:

... I think everyone’s impression upon leaving the meeting was that the OPP had the situation under control, that due diligence was being conducted and it really wasn’t a big issue at that time.

They came away from the meeting feeling that the federal government’s inaction in returning the Stoney Point Reserve was responsible for many of the actions of First Nation people. As David Moran said, “to be very direct, it was our understanding that the dithering by the Federal Government was creating a problem with respect to the [camp] and that ... the Native community in the area was frustrated by the lack of action with regard to the transfer of the [camp] to the rightful owners.” He added: “[I]t was our understanding that



the Stoney Pointers had valid title to the Camp and that the only issue in dispute was timing. It's my understanding that the issue holding up the transfer was the Federal Government's unwillingness."

Participants at the meeting did not believe these were issues of concern to the provincial government.

It is important to note that the claim by First Nations people that a burial ground existed in the park was not discussed or raised at the IMC meeting. Nor did Ms. Jai, Chair of the IMC meeting, take any measures after August 2 to research the allegation that sacred sites existed in the provincial park: "[T]he decision was just to not really do anything, just to monitor the situation until the park was actually occupied." Ms. Jai believed that the presence of a burial ground would not change the province's legal title to the park, but conceded that perhaps it provided a rationale of why First Nations people would occupy the park.

Julie Jai was on vacation from August 21 until Labour Day, the date First Nations people occupied Ipperwash Park.

A question that arises is why the prospect of appointing a third-party intervenor, facilitator, or negotiator was not explored at the IMC meeting. It was Ron Fox's experience in policing First Nations communities that developing a trust relationship with Aboriginal people is fundamental to defusing conflict. In hindsight, he thought someone in early August 1995 should have been appointed to approach the occupiers, establish a dialogue, and find out their concerns: "I think there was an opportunity that was missed in terms of being proactive."

In Mr. Fox's view, the IMC should have taken measures to recommend a third party who could initiate dialogue with the First Nations occupiers:

I think that all the signs were there that something may occur, although not definitive, that something in particular would actually occur. In hindsight, we probably should have been in a position, as a committee, to identify someone who could make the approach and determine exactly what it is those who were taken to occupy either the camp, or possibly the base, wanted.

I agree that appointing a third party — an intervener, facilitator, negotiator, or the Indian Commission of Ontario — to determine the concerns of First Nations people in the Ipperwash area might have defused the tension and perhaps would have averted some of the issues that were to emerge in the occupation of the Ipperwash Park.

It is also noteworthy that federal government representation was absent from the August 2 IMC meeting. The Guidelines for Responding to Aboriginal

Emergencies clearly stated that the IMC can be "augmented by representatives from ... federal departments" such as "Indian and Northern Affairs Canada." In developing the first line of governmental response, it would have been helpful for the IMC and other government and political staff to discuss the federal government's intentions with respect to Camp Ipperwash. As Ron Fox said:

Clearly the former CFB Ipperwash was at that point Federal property. The Department of Indian Affairs and Northern Development Canada would certainly have much [more] of a historical reference with respect to the surrender of certain lands that ultimately became the Ipperwash Provincial Park. They, I would assume, would be more in tune with timely developments relative to the environmental assessment and such things.

Clearly the participation of the Department of Indian and Northern Affairs would have provided insight to IMC members of the historical concerns of the Stoney Point people and would have assisted them in their deliberations and possible recommendations to the ministries involved.

Deb Hutton, Executive Assistant to the Premier, was sent a copy of the minutes of the August 2 IMC meeting. On the cover sheet of the minutes faxed to Ms. Hutton, Ron Fox is identified as "OPP." She said she was likely briefed by Brett Laschinger, her representative at the IMC meeting, about a possible occupation of Ipperwash Park by First Nations people and other issues discussed at the meeting.

Ms. Hutton could not recall whether she brought these issues to the attention of Premier Harris in August 1995: "It's not a matter of it not being a priority. It's simply that it didn't require immediate attention on my part at that point in time ..." At that time, the Premier's EA was focused on larger and more pressing issues.

### **7.15 Premier Harris and Cabinet Ministers Apprised of Army Camp Occupation**

Attorney General Charles Harnick received written and oral briefings of the army camp occupation in late July and early August.

Prior to the First Nations occupation of Camp Ipperwash, the Attorney General had been briefed by his staff on the powers of the Interministerial Committee (IMC) and the Procedures for Dealing with Aboriginal Emergencies. He understood ONAS was responsible for coordinating the response to occupations,



blockades, or other Aboriginal protests, and that line ministries would take the lead on matters within their jurisdiction. He also knew the IMC had the power to appoint a negotiator or facilitator, and to make recommendations on measures to resolve a First Nation protest.

On July 31, 1995, ONAS prepared an Information Note for the Attorney General on “Camp Ipperwash Land.” This fairly extensive note described the 1825 Provisional Agreement with the Chippewa Nation, the 1827 establishment of the Kettle Point Reserve and Stoney Point Reserve, and the unwillingness of the Canadian government to recognize them as two separate reserves but rather to consider them as one First Nation community. The history of the provincial government’s purchase of land that became Ipperwash Provincial Park was also canvassed. The 1942 appropriation of the Stoney Point Reserve by the federal government pursuant to the *War Measures Act* and the dislocation of the Aboriginal people were discussed, as well as the government’s failure to return the land after World War II. The note also described the May 1993 occupation of the rifle range at Camp Ipperwash by the Stoney Point people who “re-entered their ‘homeland’,” “established residence,” and had “no intentions of leaving” the site. The ONAS Information Note concluded with the following: “The First Nation has expressed on-going frustration with Canada with respect to the return of land comprising Camp Ipperwash, particularly concerning the environmental clean-up that is required before the land can be safely returned for civilian use, and matters relating to compensation for loss of use of this land.”

The Attorney General was briefed on the August 2 IMC meeting by his Executive Assistant Dave Moran who attended the Interministerial meeting. Mr. Moran raised the possibility of an occupation of Ipperwash Provincial Park located adjacent to the army camp, but he did not think this was likely. He did not consider the park occupation an urgent matter. Mr. Moran assured the Attorney General that the OPP were monitoring the situation and developing contingency plans; the “situation was well in hand.”

Attorney General Harnick received a further briefing on August 8, 1995. According to the notes of MAG lawyer Elizabeth Christie who attended the briefing, the history of Camp Ipperwash land was reviewed. The army camp occupation was characterized as being essentially a federal issue. It was explained that the core group of Aboriginal people who took control of the army camp on July 29 were descendants of families who had been removed when the federal government appropriated their land in 1942. The Attorney General was also told that the Chief and Council of the First Nation Band were not supportive of the occupation. The existence of an Aboriginal ceremonial site on the property of Ipperwash Provincial Park was also mentioned.

The Minister of Natural Resources was also briefed by his staff, Deputy Minister Ron Vrancart, as well as Jeff Bangs, the Minister's EA, and Peter Allan who had attended the August 2 IMC meeting. Neither the Minister nor his staff considered the Aboriginal occupation an MNR issue. In Minister Hodgson's view, the Ipperwash "situation had festered for many years" and the "Federal Government should have handed back the land in a clean state" to the First Nation people. He took the position that "ONAS was the lead" on this protest, and the OPP were monitoring the situation on site to ensure public safety. Although the Minister of Natural Resources was aware of the possibility of a First Nation takeover of the provincial park, he believed it "wasn't our issue." Consequently, he did not initiate or suggest any proactive measures in August to avert the escalation of the protest adjacent to the provincial property. Minister Hodgson was also familiar with the objectives and powers of the IMC — that it strived to prevent violent situations from occurring, and it had the discretion to appoint negotiators and facilitators to help resolve First Nation blockades, occupations, or protests.

Minister Hodgson's decision to leave the resolution of the Ipperwash protest and the possibility of a park occupation to ONAS, the IMC, and the OPP contrasts with his personal involvement at that time in the dispute at Cape Croker with the Chippewas of Nawash First Nation. Fishing rights and the conservation of particular species of fish were contentious issues in the Owen Sound area, and tension was growing between the First Nation people and the local fishermen. An incident occurred in early August at a marketplace when a large number of non-Aboriginal fishermen confronted an elderly First Nation woman selling fish with her nine-year-old granddaughter. Calls were made to Minister Hodgson to alert him to the situation. On his wife's prompting, the MNR Minister drove to Owen Sound to try to resolve the dispute and de-escalate the situation. He met with the Chief and Council of the Chippewas of Nawash as well as the local anglers. The situation was ultimately resolved by provincial government compensation to non-Aboriginal fishermen who relinquished their fishing licences.

The office of the Solicitor General was also apprised of the Ipperwash First Nation occupation. Deputy Minister Elaine Todres received information on the occupation from Ron Fox on August 2 before the IMC meeting. He assured her in an e-mail that he had been in continuous contact with Chief Superintendent Coles, Superintendent Parkin, and Inspector Carson regarding the Camp Ipperwash occupation, and that the situation was now "stable." Dissension between the Kettle Point Band and the "Stoney Pointers" was alluded to, as well as the occupiers' refusal to attend the August 1 Council meeting at Kettle Point. The possibility of an occupation of Ipperwash Provincial Park was also a topic of discussion.



Dr. Todres was later briefed on the IMC meeting, but the Deputy Solicitor General was not “particularly concerned” and simply considered it a “watching brief”; “we were aware of the circumstances” but “no alarm bells [were] ringing.” Solicitor General Robert Runciman had no recollection of the specific date in August 1995 on which the Camp Ipperwash occupation was brought to his attention.

As was the case with the Ministries of the Solicitor General and Natural Resources, the Premier and his staff did not devote much attention to the occupation of the army camp. Although Premier Harris was aware of the occupation, “it was not an issue that was of a high priority” for him or his government; “[i]t was viewed primarily as a federal issue.”

As previously discussed, Brett Laschinger<sup>6</sup> from the Premier’s Office attended the August 2 IMC meeting. He briefed Deb Hutton, EA to the Premier. Ms. Hutton also received minutes of the IMC meeting. She clearly did not consider it a priority item on her agenda. Ms. Hutton and the Premier’s Office staff were confronted with thirty to forty issues each day: “given the number of issues we were dealing with, it would have been very reasonable for me to say, okay, that’s parked, and the Ministry of Natural Resources will be back when there’s another issue around this.”

The First Nations occupation was essentially “parked” because, as Ms. Hutton said, “the big issue on [her] plate” was “addressing an additional \$2 billion deficit problem” that “needed some fairly immediate attention.”

## 7.16 Activities of Police and MNR

On August 1, 1995, Peter Sturdy of MNR called Inspector Carson to inform him of the Ministry of Natural Resource’s position on Ipperwash Park. It was the MNR’s position, based on advice from its legal department, that the government had title to Ipperwash Park. Mr. Sturdy also advised Inspector Carson that the Blockade Committee (IMC) was meeting on August 2 and that he would update him after they met. Potential scenarios regarding the occupation of Ipperwash Park were discussed, including the prospect of MNR seeking an injunction.

Inspector Carson also received a telephone call from Ron Fox regarding information conveyed to him by Julie Jai, the (Acting) Legal Director of ONAS. There was information that the Stoney Point people had disrupted the water supply to the park. Inspector Carson explained that when the occupiers cut the

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<sup>6</sup> Mr. Laschinger was Ms. Hutton’s Assistant.

telephone wires to deactivate the military communication system, they also disrupted the water pump that operated through the same computer system.

As previously mentioned, MNR was concerned about the water supply to the park. A meeting of park officials and DND was held on August 1. Les Kobayashi, Don Matheson, and other MNR and DND representatives discussed the installation of an emergency independent water supply system for Ipperwash Provincial Park.

At about 6:00 p.m. that evening, A/D/S/Sgt. Wright briefed Inspector Carson on his meeting with Glenn George and his assertion that there was a burial ground in the park. They also discussed the disruptive behaviour of Aboriginal people on the beach. Glenn George agreed to speak to his people in an effort to stop this conduct. As mentioned earlier, he also agreed to a R.I.D.E. program in the area in an effort to curtail the motor vehicle fatalities that had recently occurred.

Late that night, Constable Luke George informed Inspector Carson about the Band meeting held at Kettle Point that evening. Councillors and Band members, John Carson learned, were very concerned about "outsiders" at the army camp and planned to tell these people to leave the occupied area. Inspector Carson subsequently had discussions with Chief Tom Bressette regarding his view of the occupation. It was evident the Chief did not agree with or support the takeover of the barracks. Chief Bressette was worried that the actions of the Stoney Point group would negatively affect land negotiations with the federal government for the return of the military base.

Inspector Carson had hoped that after the military left the army camp, tension in this area would subside. However, immediately after the takeover of the built-up area, Aboriginal people had made comments to the effect that the occupation of Ipperwash Park was next. This concerned Inspector Carson, who wanted to ensure that public safety was not at risk. He had discussed this issue with his superiors, Chief Superintendent Coles and Superintendent Parkin. This led to the decision to place undercover officers in the park and to deploy uniformed ERT officers to Army Camp Road, Outer Drive, and the Ipperwash Park area.

Inspector Carson believed a possible confrontation could develop between the Kettle and Stony Point Band and the occupiers of the army camp. In a report to OPP Commissioner O'Grady, Inspector Carson described the plans in place should such a situation arise:

#### Responsibilities:

- keep the peace
- respond to and investigate any criminal activity
- maintain ongoing liaison with all stakeholders



### Action Taken:

- provide a constant two person patrol during daylight hours
- provide a patrol of six members during the hours of darkness
- provide one full ERT on standby at Pinery Park prepared for immediate response
- provide 24 hour NCO support
- provide a duty officer of Inspector rank available at all times
- provide intelligence information through undercover surveillance by officers posing as campers within Ipperwash Provincial Park
- Lambton County Crown Attorney, Mr. D. Vale is aware of ongoing First Nation issues relative to the military facility and land claims against surrounding lands
- the interministerial committee on First Nation issues (Blockade Committee) has been consulted and advised of the current status of Ipperwash

Inspector Carson wrote: “The situation is being monitored very closely and being evaluated on a day by day basis.”

Park Superintendent Les Kobayashi shared the MNR Draft Emergency Contingency Plan for Ipperwash Park in early August with Assistant Park Superintendent Don Matheson, Staff Sergeant Bouwman, and possibly Inspector Carson. It was clear from the MNR plan that members of the critical incident team, one of whom was Les Kobayashi, would occupy “a place at the O.P.P. Command Centre (Forest Detachment) to liase with O.P.P. and other involved agencies” in the event of a park occupation. A memo to Park Wardens distributed later in August states: “Park Wardens are to be the eyes and ears for the O.P.P. when a First Nations Person has contravened a law.”

Les Kobayashi informed Staff Sergeant Bouwman on August 2 that two years earlier, Maynard George had told MNR there was a burial site near the maintenance building at Ipperwash Park. Mr. Kobayashi could not recall if he conveyed this information to Inspector Carson.

Peter Sturdy of MNR, in a telephone conversation a few days later with ONAS (Acting) Legal Director Julie Jai, discussed the claim by First Nation people of burial grounds in the park. Inscribed in Ms. Jai’s notes: “rumours of a burial site in park but not confirmed,” and “there is a burial site on the military base for sure.”

On August 2, A/D/S/Sgt. Wright spoke with a military Captain who indicated he had met with the Elders, including Rose Manning, Melva George, Janet Cloud, Pearl George, as well as Glenn George. They agreed that on August 4,

the military and the "Stoney people" would post signs at the camp such as "Danger," "Unexploded Ordnance," "No Trespassing," and "Keep Out." Some of the signs would be placed at the fence line, and others at the north end of the property facing the lake. Water and hydro would remain operative for an indefinite period. Military officials would also teach the First Nations people to operate the water treatment plant in the park. The occupiers were also to receive a range safety course on unexploded ordnance on August 11.

A/D/S/Sgt. Wright briefed the ERT officers at Pinery Park on August 2 on patrol procedures in and around Ipperwash Park. During August, ERT patrolled Ipperwash Park and beach as well as the area surrounding the army camp. The officers were in uniform and in marked police cruisers; some were on foot patrol.

ERT officers routinely stopped vehicles, particularly those leaving the army camp. Many were "random" stops. As Constable Leblanc said, drivers were asked to produce their licence and car insurance, which they were obliged to do pursuant to the *Highway Traffic Act*. Passengers might also be asked for identification but were under no obligation to produce it.

At a briefing on August 3, at which both Inspector Carson and Inspector Linton were present, A/D/S/Sgt. Wright learned that National Chief Ovide Mercredi might be travelling to the area to mediate the situation at Camp Ipperwash.

On August 3 at 2:30 p.m., A/D/S/Sgt. Wright and Detective Constable Speck met with Glenn George and Les Jewell at the entrance to the army camp. The OPP had a warrant for the arrest of Cleve Lincoln Jackson for assault of a military officer, mischief over \$5,000, dangerous driving, and breach of probation. The OPP wanted to know if the occupiers would be willing to co-operate and have Mr. Jackson voluntarily give himself up to the police. Les Jewell and Glenn George replied that they needed to consult with their Elders and would have a response by about noon the following day. Before leaving, Glenn George told A/D/S/Sgt. Wright the First Nation people "rightfully owned Matheson Drive, Ipperwash Provincial Park, and the farmer's field" west of the army base. A/D/S/Sgt. Wright considered Glenn George a leader and thought he spoke for the occupiers on the military base. But in A/D/S/Sgt. Wright's view, the park was MNR property, the Township owned Matheson Drive, and the farmer's field was private property.

When A/D/S/Sgt. Wright returned the following day, Glenn George and Rose Manning told him they would not co-operate with the OPP regarding the arrest of Cleve Lincoln Jackson.

In early August, Detective Constable Speck had asked Constable Vince George to establish a relationship with a "person" living inside the army base for the purpose of eliciting information about the activities of the Aboriginal occupiers. Constable George was instructed to report the confidant's information to



Detective Constable Speck. Constable George routinely met with this person from the beginning of August until the end of September. On August 3, the informant told Constable George that Marlin Simon had a rifle, and Dave George had a sawed-off shotgun. Constable George also learned “Les Jewell” was “controlling Glenn George,” and there was “talk of taking over the Provincial Park.” The informant also discussed with Constable George the existence of a burial site in the park in August.

On August 4, Detective Constable Speck learned from the OPP Intelligence Unit in Orillia, responsible for the First Nations portfolio, that First Nations people would take over the park the Tuesday after Labour Day. He confirmed that Les Jewell seemed to be “calling the shots,” not Glenn George. Detective Constable Speck thinks he may have conveyed this information to Detective Sergeant Bell or A/D/S/Sgt. Wright.

Detective Sergeant Bell also communicated with Detective Sergeant Peter Lollar of OPP Intelligence in Orillia on August 23, 1995. Detective Sergeant Bell learned that there had been a shift from local leadership to “outside leadership” from the United States. As the OPP officer said at the hearings: “the dynamics were changing”:

We’d seen that over the course of the occupation when we had local leadership, I think that the relationship, although [strained] at times ... was ... open to discussion and negotiation. And I think the fear was that with outside influence ... the ability to communicate might be somewhat lessened and ... these individuals, I believe, had ties to violence, and that was a concern to us as well ...

So the potential for violence seemed to be heightening if you looked at the leadership, and that’s a concern.

Detective Sergeant Bell did not convey this information to Inspector Carson until September 1 as he believed the Incident Commander was already aware of this information.

## **7.17 The OPP Arrest Kevin Simon: A Case of Mistaken Identity**

An unfortunate incident occurred about two weeks after the occupation of the army barracks. Kevin Simon, accompanied by Nicholas Cottrelle, decided to buy a drink at the park store after spending some time at the beach on a hot summer day in August. As they walked to the store, they noticed police officers following them.

A police cruiser pulled up to the picnic table where the two boys were sitting. An OPP officer told Kevin Simon that there was an outstanding warrant for his arrest. In fact, Mr. Simon had never been charged with a criminal offence. The officer asked Mr. Simon for his name, but he refused to respond. The officer then cautioned Kevin that it is an offence to mislead the police. Kevin Simon explained: "I didn't feel that I should have to be answering questions to anybody as to my sitting there drinking some lemonade, you know, I wasn't doing anything illegal." He told the officers "[T]his is our park," and said, "They didn't seem to like that too much."

Kevin Simon refused to go with the police. Two officers grabbed each of Kevin's arms, took him to the police cruiser, and roughed him up, according to Kevin Simon and Nicholas Cottrelle. Kevin extricated himself from their grip and ran toward the beach because "I didn't want to fight" and "didn't know what else to do."

On patrol at Ipperwash Park, Sergeant Slack was told by a person in the park that a male wrestling with police had escaped from the OPP officers. As Sergeant Slack drove in his cruiser, he saw a man in white shorts running: "I got out of my car" and "began running after the male ... shouting at [him] to stop."

According to Mr. Simon, he was surrounded within minutes by a large number of people, mostly (undercover) police dressed as campers and a few uniformed officers. As the circle closed in, Kevin Simon decided to surrender. Sergeant Slack testified that he "wrapped" his arms around Kevin Simon "kind of like in a bear hug to control him," and "when I was satisfied he wasn't going to run anymore, it was a one-arm control." Kevin Simon was turned over to two police officers. Sergeant Slack has no recollection that officers surrounded Kevin Simon.

Kevin Simon was handcuffed with his hands behind his back and placed in a locked police car near the gatehouse at Army Camp Road. When he identified himself as Kevin Simon, the officers accused him of lying. The officers ran his name on CPIC<sup>7</sup> but did not get a "hit." Officer Slack instructed two officers to confirm his identity and left the area.

Mr. Simon was informed some time later that the police had located someone from the Kettle Point Band who could identify him. He was transported to Kettle Point where a First Nations officer confirmed his identification. Kevin Simon testified he was released in the dark without shoes or a shirt. The police refused

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<sup>7</sup> Canadian Police Information Centre.



to drive him back to the army camp. He began to walk to the built-up area but was soon picked up by Cecil Bernard George who had been listening to the police conversations on his scanner.

About ten First Nations people arrived at the Grand Bend Police Detachment to lodge a complaint about the OPP's treatment of Kevin Simon. Inspector Carson explained at the hearings that this appeared to be a case of mistaken identity. He was unaware that the police officers had refused to drive Mr. Simon back to Stoney Point.

## **7.18 Undercover Police in Ipperwash Park**

Undercover officers remained in Ipperwash Park throughout the month of August. A/D/S/Sgt. Wright oversaw the operation and the officers reported to him.

A prime objective of the undercover operation was to gather as much intelligence as possible. It was also to maintain high police presence in the area and to ensure public safety. Detective Constable Mark Dew and three other undercover officers set up their trailer in the northeast part of the campground near the border of the army camp. They watched the beach area between the camp and the park and tried to ensure campers did not enter the base. The OPP officers were also instructed to record the licence plates of vehicles entering and leaving the army camp, and to monitor whether people in the army camp had weapons. Any significant incidents were to be reported to the command post or to A/D/S/Sgt. Wright.

The undercover officers recorded their observations in a logbook. At no time were they responsible for evaluating or verifying the information relayed to them that was inscribed in this log.

The Park Wardens were aware of the undercover police operation, as were some campers. One family brought coffee and muffins to the officers almost every morning.

During their stay at the park, undercover officers Martin and Dunn heard a number of gunshots fired on August 7. There were also incidents of jack lighting at night — the shining of high-powered light — generally from Matheson Drive, onto the campers at Ipperwash Park.

In the latter part of August, Detective Constable Dew and the other undercover officers noticed a number of vehicles with Michigan and other licence plates from outside Ontario entering the army camp. As Detective Constable Dew said, this lent credibility to what the OPP had been told at the end of July, namely, the First Nations people would occupy Ipperwash Park.

## 7.19 MPP Marcel Beaubien Voices his Concerns on West Ipperwash to Cabinet Ministers

On July 31, 1995, MPP Marcel Beaubien sent a letter to Charles Harnick, asking the Attorney General for his “help, advice and direction” on the “difficult and sensitive situation” in his riding of Lambton. This correspondence was copied to Solicitor General Runciman, the Mayor of the Town of Bosanquet, and the President of the West Ipperwash Property Owner’s Association.

In this letter, Marcel Beaubien writes that he met representatives of the West Ipperwash Property Owners’ Association, and “[t]ensions have again escalated over this past weekend.” He also mentions that residents have been exasperated by the civil action brought by the Kettle and Stony Point Band regarding West Ipperwash Beach — the expenditure of legal fees, and the inability of the owners to sell their property. The provincial MPP states:

There is a lot of intimidation going on at the moment and the residents feel threatened ... Residents are stressed out and the situation is becoming unbearable.

Mr. Beaubien testified: “[T]here was talk in the community that people would arm themselves and look after their own property and that created an awful lot of concern with me.”

In the July 31 letter, the MPP lists a series of complaints to the Attorney General, one of which is:

Law enforcement is basically non-existent and the OPP does not seem too keen in getting involved.

He states he had been briefed that morning by Staff Sergeant Lacroix of the Petrolia OPP.

At the conclusion of the letter, Marcel Beaubien urges the government to deal with the West Ipperwash issue as soon as possible; “I need advice on how the Province wants to proceed in this matter.”

Dave Moran, EA to Attorney General Harnick, sent Mr. Beaubien’s letter to officials in the Ontario Native Affairs Secretariat (ONAS) to assess whether these issues had relevance to the Ministry. Ms. Jai responded, “Ontario is NOT a party to this action,” namely, the lawsuit involving West Ipperwash Beach. Attorney General Harnick did not think he spoke directly to Mr. Beaubien about the issues raised in the July 31 correspondence.



Although Solicitor General Runciman was copied on this letter, neither he nor his Deputy Minister saw the Beaubien correspondence complaining about the police or the tension in the Ipperwash area. Dr. Todres explained that correspondence units in the provincial ministries were responsible for sending responses to letters, or routing correspondence to particular officials in the civil service for their reply. In the normal course, the Deputy Solicitor General would not receive such correspondence, nor was it the “custom of any Minister’s office to reply to a c.c. or to an FYI.” In fact, with regard to Mr. Beaubien’s letter, the Ministry of the Solicitor General Communications Branch Correspondence Unit wrote: “[N]o response necessary at this time as letter is not addressed to the Minister.”

## 7.20 The OPP Meet with Marcel Beaubien

On August 8, 1995, Inspector Carson learned Mr. Beaubien had sent a letter to Attorney General Harnick that described his concerns about policing in the West Ipperwash area. Inscribed in Inspector Carson’s notes is Mr. Beaubien’s remark that “law enforcement non-existent OPP not interested to get involved.”

As a result of Mr. Beaubien’s letter, the OPP met with the MPP in his constituency office in Petrolia on August 11. Representing the police were Superintendent Parkin, Inspector Carson, Inspector Linton, and Staff Sergeant Lacroix.<sup>8</sup> Mr. Beaubien discussed his concerns about Ipperwash Park and the anxiety and frustration of cottage owners in the area. Inscribed in Superintendent Parkin’s notes is that Mr. Beaubien “will be pushing Runciman + Harnick + MNR for direction + a position.” The OPP tried to reassure Mr. Beaubien that the police were fully aware of the issues at Ipperwash and were sensitive to the concerns of the surrounding non-Native community.

Marcel Beaubien was clearly frustrated with the disinterest and lack of communication by Queen’s Park regarding the Ipperwash First Nations occupation. At the hearings, Mr. Beaubien explained why he thought it was important to meet with the OPP:

*... We had a major situation ... in the riding. I don’t think that Queen’s Park appreciated the seriousness of the issue; that’s my personal feeling or personal opinion. I was not getting an awful lot of information from Queen’s Park or direction, contrary to popular beliefs. And the only source of information that I could relay was my interaction with the OPP. I didn’t expect them to tell me anything about their operational,*

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<sup>8</sup> Staff Sergeant Lacroix was the Detachment Commander in Petrolia.

their intelligence ... and what they were doing. But I certainly expected them to tell me that we had the proper level of policing; ... people are taxpayers, they expect to be protected. They expect to be able to enjoy — the enjoyment of the property. So, I think it was important to have that interaction with the police, with the different police officers at that time ...

Now, we had a lowly backbencher in Lambton that's screaming and hollering that we've got a serious situation in Lambton ... [T]his situation impacted on approximately or maybe at best, 10,000 people in the area. You know, we're looking at an impact ... somewhat financially for the business sector in Forest. But basically we're looking at the area in the Ipperwash area. So, when I say 10,000 people I'm probably stretching it but ... [that is] maybe 15 percent of my riding ... [M]y personal opinion was that I'm not getting anything. I don't seem to be getting a sympathetic ear from anybody at Queen's Park; not only the political side, but the bureaucratic side. (emphasis added)

Mr. Beaubien sent a letter to Attorney General Charles Harnick a few days later that purported to report on his meeting with the OPP in Petrolia. A copy of this letter was also forwarded to Solicitor General Runciman and to the Minister of Natural Resources, Chris Hodgson. Inspector Carson and Superintendent Parkin took issue with some of the statements in this August 14 letter. Mr. Beaubien wrote that he and the OPP representatives had "reached the following consensus":

1. As the Ipperwash Campground is provincially owned, we should be in a position to legally uphold this property.
2. Enforcement is only a short term solution.
3. *Ministries involved have to give the OPP clear guidelines for law enforcement.*
4. The long term solution is a negotiated settlement.

However, we need to see a clear stand on what Provincial ownership of land means and that the laws of the Province will be upheld. This needs to be made very clear without delay. (emphasis added)

Inspector Carson took issue with the term "consensus" in Mr. Beaubien's letter. Several issues were discussed at the meeting, but a "consensus" had not been reached between the OPP officials and the MPP. Superintendent Parkin agreed.

Superintendent Parkin, Inspector Carson, and Staff Sergeant Lacroix were also critical of Beaubien's statement that provincial ministries needed to "give



the OPP clear guidelines for law enforcement.” As Inspector Carson said at the hearings: “I don’t believe that’s accurate ... The OPP doesn’t take guidelines from the ministries in order to do law enforcement.” Inspector Carson made it clear that the OPP had a sound understanding of its law enforcement responsibilities. If the park were occupied, a court injunction would provide legal direction on the issue of ownership. Staff Sergeant Lacroix confirmed that “we were trying to tell him [Marcel Beaubien] that it’s not going to be direction from the Solicitor General or the MNR or anybody else; it’s going to be direction from the courts.” But Mr. Beaubien testified that his “intent was not to try to get direction” from the politicians on “how ... the police should be doing their work.” The former MPP claimed he was saying that the government ministries should be making clear to the OPP its position regarding title to the land at Ipperwash Park.

Although OPP Commissioner O’Grady did not recall seeing Marcel Beaubien’s letter, he vociferously stated that the government ministries — the Ministry of the Attorney General and the Ministry of the Solicitor General — did not give the OPP guidelines or direction on how to enforce the law in August 1995. If someone had attempted to give him instructions on how to enforce the law, Commissioner O’Grady would have either “ignored” or “refused” to adhere to them.

Inspector Carson also said that the following statements in the letter to the Attorney General reflected Mr. Beaubien’s and not the OPP’s sentiments:

... the properly elected First Nation officials are supportive of upholding the laws of the land. *What we have is a small number of dissidents making a mockery of the system ...*

As detailed to Ministers Hodgson, Harnick and Runciman, we will take the following position until further instruction is received from the Ministries. We will be legally prepared to uphold Ipperwash Park. Enforcement is a short term solution and *we need the Ministries to give clear guidelines to the OPP for enforcement*. We would like a negotiated settlement. Failing that, a clear stand on what are provincial matters and that the law will be upheld. This is an opportune time as elected First Nation officials are supportive in upholding the law. (emphasis added)

Mr. Beaubien conceded he did not speak directly to the Attorney General, the Solicitor General, or the Minister of Natural Resources. He merely sent correspondence — letters, faxes — to these ministries. It is noteworthy that in a letter to one of his constituents on the same day, Marcel Beaubien again asserts

that he has met with the Attorney General, the Solicitor General, and the Minister of Natural Resources to discuss his constituents’ concerns regarding the situation at Kettle and Stony Point. And again Mr. Beaubien acknowledged at the hearings, “I contacted their Ministries but not the Ministers directly.”

Former Attorney General Harnick and Deputy Attorney General Taman do not think they received the August 14 letter from Mr. Beaubien. Nor did Minister Hodgson or Solicitor General Runciman, who were copied on the correspondence, see Mr. Beaubien’s letter in August. Deputy Solicitor General Todres explained: “[W]hat would have happened in the Attorney General’s office would have been exactly the same as happened in ours ... [T]he Attorney always had a very large correspondence unit [to which] that letter would have been referred. I would suspect it would have gone through the chain. They would have understood that the cc’s were just FYI’s.”

Both the former Solicitor General and Deputy Solicitor General had serious concerns about Mr. Beaubien’s letter. Dr. Todres was critical of Mr. Beaubien’s statement that “Ministries involved have to give the OPP clear guidelines for law enforcement.” She said, it is “[f]actually incorrect, statutorily incorrect, clumsy, and not within his purview to comment on.” Solicitor General Runciman was of the same opinion. He thought a “red light” or an “alarm bell” should have been sounded regarding the conclusions Mr. Beaubien reached at this meeting. Mr. Runciman did not know whether Mr. Beaubien was cautioned in August 1995 regarding the separation of politicians from police operational details involved in Ipperwash. He agreed that his ministry, the Solicitor General’s Office, was the appropriate government ministry to issue that caution.

Deputy Commissioner Boose called Superintendent Parkin on August 16 to discuss concerns raised about police in the Ipperwash area. According to the notes of Superintendent Parkin, the Deputy Commissioner asked: “[W]e say we will enforce [the] law, but are we doing that[?]” Superintendent Parkin advised him charges had been laid and a suspect was in custody for the July 29 occupation of the military base. He also discussed with Deputy Commissioner Boose the meeting with Marcel Beaubien and the MPP’s concern with the frustration of cottage owners and local residents.

## **7.21 Letter Written by Councillor Gerald George to the *Forest Standard* Newspaper**

Gerald George, Councillor of the Kettle and Stony Point Band, wrote a letter to the editor of the *Forest Standard* newspaper that was published on August 30, 1995. He did not confer with Chief Bressette before he sent the letter to the local



newspaper. Gerald George compared the occupation of the army camp to the “L.A. Riots” and said the occupiers were acting “like animals” and “jerks.” Mr. George was very agitated that some First Nations people had harassed a family on Camp Ipperwash Beach. “We all do not act like the army camp Indians,” he wrote. This published letter further exacerbated the tension between the Kettle and Stony Point Band and the camp occupiers.

One week later, hours before Dudley George’s death on September 6, Councillor Gerald George drove to Ipperwash Provincial Park. As will be discussed in greater detail, the Stoney Point people occupied the park at that time. An altercation ensued between him and an occupier, which Gerald George reported to the OPP. Hours later Dudley George was shot. The information conveyed by Councillor George and the miscommunications that resulted within the OPP escalated the seriousness of the occupation as perceived by the police. This had a significant impact on decisions made by the OPP on the night of September 6, 1995.

## OPP PREPARE FOR PARK OCCUPATION

### **8.1 Confirmation First Nations People Plan to Occupy Ipperwash Park**

Inspector Carson heard further confirmation from Staff Sergeant Bouwman on August 16 that First Nations people planned to take over Ipperwash Provincial Park. Bert Manning had advised OPP officers that the park would belong to them after Labour Day. Similarly, Superintendent Parkin received information through Inspector Linton that Glenn George had announced that Ipperwash Park would belong to the occupiers after Labour Day. Statements to this effect had been made to the police after the takeover of the army base at the end of July 1995. There now appeared to be a concrete time frame for the proposed action of the Aboriginal people.

The following day Inspector Carson discussed with Superintendent Parkin the latest developments regarding Ipperwash Park. The issue of ownership of the park was discussed. Chief Superintendent Coles was contacting Ron Baldwin, District Manager at the Ministry of Natural Resources (MNR), to obtain written documentation on the Ministry's position regarding title to Ipperwash Park. Peter Sturdy, MNR Zone Manager (Southwestern Ontario), received an e-mail on August 17 that said Chief Superintendent Coles wanted the following: (1) proof of MNR's clear title to Ipperwash Provincial Park; (2) a statement of MNR's position if the "native" occupation occurs; and (3) a letter to the OPP with MNR's position statement. Ron Fox, Special Advisor on First Nations for the Ministry of the Solicitor General, confirmed that day there were no outstanding land claims at Ipperwash.

Tension between members of the Kettle and Stony Point Band and the occupiers at the army camp was escalating. Band members felt the negotiations with the federal government had waned because of the army camp occupation that summer. To demonstrate their frustration, the Band planned to set up a blockade on Highway 21. This in fact did not occur. The occupiers of the army camp were equally upset that the federal government was not negotiating with them directly for the return of their reserve.

Inspector Carson received a call from Peter Sturdy a few days later. The MNR official indicated that the documentation for Ipperwash Park would be prepared by Monday, August [28], 1995.



A meeting of senior OPP officials was held on August 28. In attendance were Chief Superintendent Coles, Superintendent Parkin, Inspector Carson, Inspector Hutchinson, and Acting Sergeant Ken Deane. Possible tactics with regard to the Ipperwash Park occupation were discussed. It was suggested that the ERT (Emergency Response Teams) and TRU (Tactics and Rescue Unit) be lined up as part of the logistical planning. The use of a mobile command unit and the location of the command post were also discussed.

It was decided that Incident Commander John Carson would lead a planning session at OPP District Headquarters in London, Ontario. Expected to attend were A/D/S/Sgt. Wright, Sergeant Korosec, Acting Sergeant Deane, and Sergeant Grant from the London training unit. Plans were to be developed for the possibility of an “extended standoff.” John Carson believed at the end of August 1995 that the OPP would be in that area for a long time.

On August 28, MNR sent a memo to all Park Wardens regarding procedures to deal with the First Nations people. It stated: “Park Wardens are to be the eyes and ears for the O.P.P. when a First Nations Person has contravened a law. Park Wardens shall contact the O.P.P. immediately and advise the officers who are dispatched what offences can be charged and direct the O.P.P. constables to lay the charges.”

The following day, John Carson called the RCMP in British Columbia to learn about the “Native” standoff at Gustafsen Lake. He hoped to acquire information on the Gustafsen Lake incident that could possibly assist him in his planning for the expected Ipperwash Park occupation in the forthcoming days. Carson spoke with Inspector Dave Guy who provided an overview of the land claim dispute, explained the challenges they were confronting, and the terrain in the area. The RCMP had been subjected to gunfire. They also discussed some of the similarities between the two First Nations protests.

## **8.2 The OPP Planning Meeting — August 29, 1995**

As a result of the meeting of senior OPP officials the previous day in which contingency planning for the park occupation had been discussed, Inspector Carson organized a meeting in London. Present were A/D/S/Sgt. Wright (Criminal Investigations), Acting Sergeant Deane (TRU), Sergeant Korosec (ERT), and Sergeant Grant (Logistics). The purpose of the session was to discuss various scenarios with regard to the occupation of Ipperwash Provincial Park and to devise strategies for this impending occupation, expected to occur after Labour Day weekend.

Inspector Carson made it clear at the meeting that the officers should not hesitate to freely express their views. His management style was to listen to the opinions of the OPP officers and incorporate what he considered to be good suggestions into an operational plan. Some of the issues discussed were the civil dispute in West Ipperwash between the Kettle and Stony Point Band and cottage owners over the surrender of the land, as well as the illegality of an occupation of Ipperwash Park by First Nations people. Carson also shared the information he had recently received on the standoff in Gustafsen Lake in British Columbia.

They discussed the possibility of TRU being stationed at Pinery Park, and for police boats from Forest, Kincardine, and Sombra to patrol the waters outside Ipperwash Park. They also contemplated the use of armoured vehicles for the impending park occupation. Medical support and the possibility of air ambulance service were also raised. Inspector Carson explained that an OPP command trailer would be moved to Forest from London.

The roles of the various OPP units involved — ERT, TRU, negotiators, criminal investigators — were discussed and a chart was developed of the tasks to which each would be assigned. This organizational chart was ultimately incorporated into Project Maple. There was reference to Sergeant Brad Seltzer, an OPP Negotiations Team Leader, and Constable Bob Martin, a crisis negotiator, as possible individuals who could serve as negotiators in the event of a park occupation.

Various scenarios of the park occupation were explored. One scenario was that OPP officers would remain in the park with the Aboriginal occupiers during the time the Ministry of Natural Resources was seeking a court injunction. Another was that, as Aboriginal people entered the park, they would be treated as trespassers. A third scenario was that, if the police needed to withdraw from the park to avoid violence or a confrontation with the First Nations people, they would secure the area while MNR proceeded with the injunction application. A fourth scenario — officers patrolling the large outer perimeter of the park to prevent the Aboriginal people from entering after it had been officially closed on September 4 — was dismissed as not viable. John Carson explained the reason for this decision:

... it comes down to simple logistics that while we could patrol it and maintain an officer presence that probably would deter an entry into the park or an attempt to occupy the park, at some point in time we have to withdraw the resources. I mean, *once the park is closed, we have 109 acres of property that is literally pine trees, and at what point in time do we determine it's no longer necessary to protect 109 acres of pine trees?* (emphasis added)



At the August 29 meeting, Sergeant Korosec was instructed to visit the Ipperwash area with Acting Sergeant Ken Deane to consider checkpoint locations, the number of officers required to “man” the checkpoints, and a possible site for the tactical operations centre and for communications.

Later that afternoon, Inspector Carson and A/D/S/Sgt. Wright travelled to Forest to arrange for the installation of a portable radio tower to enhance the OPP’s communication capabilities. Radio penetration in the Ipperwash area was a challenge because of the geography and the sand dunes. Dressed in plain-clothes, they went into Ipperwash Park to assess whether a sufficient number of undercover officers were at the campsites.

### **8.3 August 30 to August 31, 1995**

Inspector Carson met with Sergeant Brad Seltzer on August 30 to discuss the possible Aboriginal occupation of Ipperwash Park on Labour Day. Sergeant Seltzer was asked to prepare a schedule of negotiator teams for the impending occupation.

When Detective Sergeant Richardson arrived in Forest on August 30, A/D/S/Sgt. Wright informed him that Ipperwash Park was closing for the season on Labour Day, September 4, and there were rumours that the Stoney Point people at the army base might occupy the provincial park. Wright assigned Detective Sergeant Richardson the role of primary investigator and file coordinator for Project Maple. Richardson was responsible for arranging the arrest teams and outlining possible charges that could be laid against the occupiers.

On August 31, OPP Superintendent Parkin met with Inspector Carson to discuss a contingency plan for the possible occupation of Ipperwash Park.

That morning, Acting Sergeant Deane and Sergeant Korosec travelled to Ipperwash Park. They examined different access points to the park, possible checkpoints sites, and the location of the TOC (Tactical Operations Centre). TRU Constables Zupancic and Beauchesne also visited the park area to check routes in and out of Ipperwash Park in the event that TRU was deployed.

Peter Sturdy received an e-mail from Ed Vervoort, MNR Enforcement Specialist, on August 31 regarding the Ipperwash Security Plan, sent in preparation for a meeting to be held the following day. The plan was put together in the event that Ipperwash Park campers and day users needed to be evacuated. According to the plan, the critical incident team would occupy a place at the OPP command post (Forest Detachment) to liaise with the OPP. MNR personnel at the OPP command post would also communicate with senior MNR

personnel. Anyone found inside the park would be dealt with under the *Trespass to Property Act*.

#### 8.4 The Development of Project Maple — September 1, 1995

The OPP meeting convened by Inspector Carson on September 1, the Friday of Labour Day weekend, was much larger than the planning session held a few days earlier. Inspector Carson invited about twenty officers, each of whom was on an assigned team, to develop options in their particular area of expertise. For example, Sergeant Korosec and Sergeant Huntley were on the Emergency Response Team (ERT), Detective Constable Speck was on Criminal Investigations, Sergeant Babbitt was in Media Relations, and Sergeants Japp and Grant were assigned to Logistics. A/D/S/Sgt. Wright, Sergeant Seltzer, Detective Sergeant Bell, and Acting Sergeant Deane were also at the September 1, 1995, meeting. The officers broke into their respective teams to develop plans for the park occupation.

A/D/S/Sgt. Wright had recently returned from the Canadian Police College, and Project Maple was constructed along the lines of the major case management course he had just completed.

Inspector Carson made it clear at the beginning of the meeting that the objective of Project Maple was “to contain and negotiate a peaceful resolution.” Carson stressed that it was very important the officers understand the objective of their assignment. As Inspector Carson explained at the hearings, the concept of containing and negotiating a peaceful resolution is taught in courses on crisis negotiation, ERT training, tactical training — all levels of emergency response training.

The officers were told that if Ipperwash Park was occupied, the OPP Forest Detachment would become the Incident Command Post, and Forest police officers would operate out of Grand Bend. Inspector Carson estimated that perhaps twenty First Nations people would attempt to enter the provincial park.

It was decided that First Nations people who tried to enter the park would be told by Ministry of Natural Resources representatives and then by the OPP that they were trespassing. If they refused to leave the park site, MNR would make preparations to seek a court injunction. OPP officers were to take measures to try to prevent additional Aboriginal people from joining the park occupation. They were responsible for containing the perimeter of the park. It was understood that this could prove difficult, given the large park perimeter.

The possibility of gunfire and violence was raised — “Natives in the military base do have weapons ... the outsiders are the concern ... there is potential for violence.” It was made clear at the meeting that in the past, there had “never been any



situation where the OPP have been challenged with a firearm” by these Aboriginal people. As Inspector Carson elaborated in his testimony, the occupiers had guns because they were hunters. There had not been one incident between OPP officers and Aboriginal people occupying the rifle range since 1993, and the army camp since July 1995, that involved guns. Carson “didn’t believe” the Stoney Point people would use firearms against the OPP officers. Inspector Carson wanted to ensure that his management team “operating at this incident” had this understanding. But as Carson said, according to police intelligence, there were people from other areas with different backgrounds that the OPP “couldn’t be so confident of.”

The “wors[t] case scenario” was discussed. In the event that shots were fired, the TRU team would be deployed immediately. The OPP would need to secure the crime scene for an investigation. The following words were inscribed in the notes of the September 1 meeting: “Hopefully it will be a very peaceful demonstration.”

Arrangements were to be made to move the TRU team from London to Pinery Provincial Park, where they would be placed on standby.

An organizational chart of the various duties was developed and finalized the next day.<sup>1</sup>

The Officer in Charge was Chief Superintendent Coles. Inspector Carson was designated as the Incident Commander, with A/D/S/Sgt. Wright as the Assistant Commander. Sergeant Korosec was responsible for leading the ERT teams, and Acting Staff Sergeant Skinner would lead TRU. Intelligence was Detective Sergeant Bell’s responsibility, with Sergeant Seltzer as the leader of the Negotiation Teams.

It was decided that ERT officers would respond to the park occupation. Four ERT teams, each consisting of fifteen officers, were assigned to the Ipperwash area, a total of sixty ERT officers. It was stressed that the reporting relationships in the chart had to be followed. The chart would be kept in the command post.

In the event that an officer was not available, it was incumbent on him or her to find a replacement throughout the operation of Project Maple.

The officers were informed that “kids and women may be used on the front line by the natives.” An inventory had been conducted of all the policewomen in the area because the OPP intended to deploy “a lot of women” officers in the event that Aboriginal people occupied Ipperwash Park.

The role of intelligence was discussed. Detective Sergeant Trevor Richardson was designated as the primary investigator. He was to have an analyst assist him

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1 The organizational chart can be found in the photo section at the end of the Part I report.

with his work. The intelligence officers were to gather information on the Aboriginal people occupying the park, as well as sympathizers outside the local area who might come to Ipperwash to provide support. The OPP's primary concern was "outsiders," people who were not from the Kettle and Stony Point First Nation or the former Stoney Point Reserve. It is significant that throughout the occupation of September 4, 5, and 6, no analyst was in fact assigned to perform the intelligence functions described in the operational plan. I discuss this failing in intelligence in the succeeding chapters of the report.

The officers discussed cohabitation, that is, the presence of ERT members in the park with the Aboriginal occupiers. Inspector Carson said, "[W]hen we approach the natives to leave, we always stay in their face." It was the Incident Commander's intention that, during cohabitation, officers would be physically close to the occupiers and not stationed "a hundred yards away watching them with binoculars." He wanted the police to interact and communicate with First Nations people in an attempt to keep the situation "as calm as we could." John Carson believed that if officers engaged the Aboriginal people in dialogue, there was less risk of harm: "It was my view that if we were in there and talking with them, that there was less risk to the officers than being a target from a distance."

It was decided that ERT officers would wear their grey uniforms and have "long guns" or rifles in the trunks of their vehicles. These were Mini Rugers, semi-automatic guns.

Concrete barriers were to be placed on Matheson Drive to impede vehicles from entering Ipperwash Park.

Although the necessity of ambulance services was raised at the meeting, John Carson was uncertain when he testified at the hearings who had the responsibility for arranging these medical services. He surmised that perhaps the logistics team had been discharged with this task.

The purpose of bringing in OPP boats from Forest, Kincardine, and Sombra was to monitor the area and to prevent people from accessing Ipperwash Park from Lake Huron.

A scribe was assigned to shadow Incident Commander Carson. Karen Shaw, an administrative assistant for the OPP in Chatham, was designated the role of writing instructions or directions given by the Incident Commander, as well as any information received by him. These notes were to be typed daily and placed in a log.

Sergeant Brad Seltzer requested a separate room for negotiators, as well as a separate telephone line.

It was made clear that the Ministry of Natural Resources would proceed with an injunction application if the First Nations people occupied the park. The OPP



project team leaders were apprised of documentation that supported the MNR's position that the government had clear title to the park land.

At the conclusion of the meeting, these officers were told that copies of the operational plans for each group would be assembled into a master plan to be called "Project Maple."

## 8.5 MNR Activity on September 1, 1995

On the morning of September 1, Peter Sturdy attended an MNR meeting to review the role of each person before the OPP meeting scheduled for that day. It was agreed that everyone would try his or her best to ensure that all communications were circulated to everyone identified as being part of the critical incident team.

That afternoon, Peter Sturdy, Ron Baldwin, Ed Vervoort, and Les Kobayashi of MNR met with Inspector Carson at the OPP London Detachment. Inspector Carson convened this meeting to provide a briefing on the expected roles of MNR and the OPP, and how they might respond to the anticipated occupation of Ipperwash Provincial Park. When the MNR officials walked into this meeting, they saw the words "Resolution through peaceful negotiations" inscribed on the blackboard in the room.

The OPP thought there was a strong likelihood that Ipperwash Park would be occupied on Labour Day, September 4, or Tuesday, September 5. Inspector Carson was relying on MNR to secure an injunction, assist with communications, and help with logistical support. They discussed a scenario whereby MNR Park Superintendent Les Kobayashi would serve a notice of trespass on the Aboriginal people occupying the park. In the event of an occupation, Mr. Kobayashi understood that it was his role to ensure all staff and visitors were evacuated from the provincial park, to post notices and signs, to serve the trespass notice, and to be present at the command post.

The injunction was discussed at the meeting. This was the preferred route of the OPP, and Mr. Sturdy from MNR agreed that it was the most appropriate way of dealing with an Aboriginal occupation.

Representatives of MNR were concerned about evacuating Ministry assets and all staff and visitors, and were particularly concerned with ensuring that everyone was safe. After the meeting, equipment, such as filing cabinets, was moved out of the park. Copies of keys to the park buildings were given to the OPP. A notice of trespass was prepared, and some signs were sent to the park.

Mr. Sturdy sent an e-mail to a distribution list reporting on the meeting.

## 8.6 Project Maple

On September 2, 1995, the Saturday of Labour Day weekend, Inspector Carson went to OPP District Headquarters in London to compile the plans of the various OPP teams and assemble them into what would become Project Maple. In each of the fifteen copies of the Project Maple booklets that were later distributed, the objective of the plan was prominently displayed in large letters on the first page: TO CONTAIN AND NEGOTIATE A *PEACEFUL* RESOLUTION.

The community liaison section in the operational plan emphasized the importance of communication with stakeholders, local municipal officials, and the Chief of the Kettle and Stony Point Band:

The communication exchange with the affected community is considered a vital component to the success of the operational plan.

Consultation with the area stakeholders will be maintained throughout the operation of the plan. Local municipal officials will be updated and consulted on issues of a community concern. The Chief of Kettle and Stony Point Band will be consulted regarding the impact and concerns of the First Nations Territory.

Personnel assigned to liaison duties have a sound understanding of the local historical issues.

The responsibilities of the Emergency Response Teams, headed by Sergeant Korosec, were to contain Ipperwash Park, to maintain a presence in the area, and to ask people to leave the park. Twenty-four ERT members were to patrol the inner perimeter of the park from inside the fence. Four checkpoints were to be set up at two locations on East Parkway Drive and on Army Camp Road to monitor the vehicles travelling in these areas.

Intelligence had four functions, according to the plan:

1. Identify as many people as possible who are occupying the base.
2. Develop biographical profiles on those identified.
3. Attempt to identify visitors attending the base.
4. Collect, analyze, and disseminate all pertinent intelligence relating to this operation.



As Inspector Carson explained at the hearings, OPP intelligence was to identify the people who occupied the provincial park, others who later joined the occupation, and those visiting the occupiers. I discuss intelligence under the Project Maple plan in fuller detail in the following sections.

The TRU Operational Plan repeated the objective: “To resolve through negotiation a peaceful resolution.” The TRU Commander was Acting Staff Sergeant Skinner, and the second-in-command was Acting Sergeant Deane. Their mission was “to be utilized on an as needed basis.” According to Project Maple, the “Western Region TRU to be activated if weapon usage occurs” and the “Eastern Region TRU to be activated as secondary unit.” The TRU Team had a separate radio station with the result that ERT officers would not hear communications from TRU officers.

According to the Media Relations Operational Plan, Sergeant Doug Babbitt, with the Incident Commander, would supply information to the press on the park occupation.

Another component was the Negotiations Response Plan. Sergeant Seltzer was responsible for three negotiating teams. Each team had a leader and two negotiators. The standard arrangement was that the primary negotiator spoke directly to the target, while the secondary negotiator listened to the conversation on a handset and coached the primary negotiator. The team leader’s role was to monitor the negotiations and report on the progress of communications to the Incident Commander.

John Carson agreed at the hearings that the Negotiations Response Plan did not contain: (1) a negotiation strategy for important messages that ought to be conveyed to the occupiers; (2) the technical aspects of how the OPP would communicate with the occupiers; or (3) specified people outside the OPP who could communicate with the occupiers.

As I describe in the forthcoming chapters, this was a serious failing on the part of the OPP who did not, in advance of the impending occupation, compile a list of First Nations negotiators, such as Bruce Elijah, Bob Antone, or National Chief Mercredi — people who could possibly help resolve issues that could emerge in the Aboriginal occupation of Ipperwash Park. Nor were efforts made to prepare a list of respected and trusted people in the Ipperwash community, such as Elders or former Chief Bonnie Bressette, who could also possibly assist in resolving issues between the Aboriginal occupiers and the OPP and MNR.

There was no negotiation strategy in Project Maple by which important messages would be communicated to the occupiers. Nor were the technical aspects of communicating messages to the Aboriginal people discussed in Project

Maple — such as by megaphone, by pamphlet, or by field telephone. It is also significant that Brad Seltzer had no training in the crisis negotiation of an occupation, no training in Aboriginal culture or history, nor was he aware of any protocols or policies to address this situation.

## 8.7 Intelligence under Project Maple

### 8.7.1 *Expert Testimony on Police Intelligence*

Wayne Wawryk, an expert in police intelligence, testified at the Part I hearings. He explained that the intelligence process or cycle consists of seven steps: planning and direction, collection, collation, evaluation, analysis, reporting and dissemination, and re-evaluation.<sup>2</sup>

According to Wayne Wawryk, the success of the intelligence process depends on a continuing flow of accurate, up-to-date, and relevant information from all possible sources (collection phase) in response to the priority needs (planning/direction phase). It is essential that the information be retained in the unit's files or data base, that it be indexed, cross-referenced, and filed and stored in a manner that may be easily retrieved. The classification and cross-referencing should be done in a manner that supports the analysis function (collation phase). Each intelligence unit should have some method for determining the value of the incoming information that is to be entered into the file or data base. The evaluation should be performed by a well-trained person in the intelligence unit (evaluation phase). On the basis of the information flow, the analyst will seek to determine new developments and warn of impending activities (analysis phase). The intelligence unit is responsible for producing intelligence assessments, both those specifically requested and those generated by the flow of available information (reporting/dissemination phase).

The collection and evaluation phases deal with the storage, indexing, retrieval, and assessments of reliability. The reliability assessment prevents pure rumour from being placed into the system. A reliability rating is given to each piece of information.

Mr. Wawryk discussed the different levels of reliability:

- **Reliable (R)** is a combination of proven accuracy of information and proven dependability of a person. Every effort must be made to validate information before grading it reliable.

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<sup>2</sup> The Intelligence Cycle Diagram can be found in the photo section at the end of the Part I report.



- **Believed Reliable (BR)** applies if the qualifying conditions of reliability are not yet met, but the existing knowledge of the source is favourable and it is believed he/she will eventually prove reliable.
- **Unknown Reliability (UR)** applies if there is insufficient experience with the source for assessment or when information cannot be verified.
- **Doubtful Reliability (DR)** applies if there is doubt about the source or the information.

The two key criteria for reliability are the proven accuracy of the information and the proven dependability of the person or source. The different rankings of reliability are of great importance to the Incident Commander who makes operational decisions based on this intelligence.

Mr. Wawryk stressed that there must be a sufficient number of people to process and analyze the information and that the intelligence officers must be adequately trained. As he said at the hearings, assessing reliability is a sophisticated art and front-line officers are not trained to perform this reliability evaluation. As the intelligence expert cautioned, it is “risky” to employ a use of force option to resolve a situation based on information of unknown reliability.

Raw data is perishable and must be updated. According to Mr. Wawryk, the intelligence process is a way of sorting out what is important and what has changed from a prior assessment. It is the filter that determines what remains through the passage of time.

It is necessary to have a constant refresh of data to remain connected to the situation. Only when the data is subjected to analysis can a pattern emerge. As data moves through the intelligence process, it becomes more valuable, and one’s understanding of relations and patterns increases. Different officers may have a piece of a problem but until work is done in a strategic fashion, the police will not be able to understand relationships and patterns that have emerged in a particular operation.

The Incident Commander is the client or ultimate consumer in the intelligence process. The Incident Commander decides how the intelligence will be used in the police operation.

Separation of the Incident Commander from the intelligence process is important. As Wayne Wawryk said, the Incident Commander should be in a “glass booth.” The rationale behind isolating the Incident Commander is to prevent him or her from being affected by extraneous information. The Incident Commander should not analyze or evaluate the information.

One officer should take all the processed intelligence to the Incident Commander. In this way, the Incident Commander listens to one person. This

officer should have control and be responsible for the officers in the intelligence unit. Having one person is a safety valve with respect to preserving the integrity of the information.

As Wayne Wawryk said, the “diffusion of the intelligence process does not bode well for the Commander and his or her ability to make decisions.” If information is fed to the Incident Commander without filtering or analysis, he is listening to many people at one time. This will be confusing and more chaotic.

He also said that it is important for people in the intelligence cycle who perform the evaluation analysis to have cross-cultural training. As he states in his testimony, a different cultural reality can be in play when dealing with First Nations people. In situations where front-line officers encounter a different cultural reality, there is a risk that they might misinterpret what they observe. As I discuss in the forthcoming chapters, this is precisely what occurred in the Aboriginal occupation of Ipperwash Park.

### *8.7.2 Weaknesses in Intelligence under Project Maple*

The intelligence component was originally omitted from the organizational chart in Project Maple. On the Project Maple chart, it is clear that intelligence is an “add-on” or “afterthought.” As mentioned, intelligence had four functions according to the plan: (1) to identify as many occupiers as possible; (2) to develop biographical profiles on those identified; (3) to attempt to identify visitors to the Ipperwash area; and (4) to collect, analyze, and disseminate all pertinent intelligence relating to this operation.

Detective Sergeant Bell, according to Project Maple, was in charge of over-all intelligence.

The intelligence unit was to report through Detective Sergeant Richardson, who in turn would communicate the intelligence to Inspector Carson. This represented a change in the reporting relationship — Detective Sergeant Bell reported to Detective Sergeant Richardson. Instead of Bell as the head of the intelligence unit reporting directly to the Incident Commander, Detective Sergeant Bell reported to Detective Sergeant Richardson, according to the Project Maple plan. But Detective Sergeant Richardson had no specialization as an intelligence officer.

There appeared to be confusion between Detective Sergeants Bell and Richardson as to who reported to whom and who was responsible for intelligence under Project Maple. Although Detective Sergeant Bell was listed in a reporting relationship to Detective Sergeant Richardson on the organizational chart, Detective Sergeant Richardson considered the two to be at the same level.



As team leader of the intelligence unit under Project Maple, Detective Sergeant Bell's role was outlined in the operational plan. He understood that his primary role was to identify as many occupiers as possible, to develop their biographical profiles, and try to identify visitors to the Ipperwash area. Bell also was well aware that the intelligence unit was responsible for collecting, analyzing, and disseminating intelligence related to the Ipperwash occupation.

The "classic" intelligence system was not put into place in Project Maple. As mentioned, in a standard operation, an Incident Commander relies on his or her intelligence team to provide a finished product in which raw data has gone through the intelligence cycle. Under the traditional model of intelligence, all raw data flows through the intelligence unit and then to the Incident Commander. This eliminates potential misinformation or unanalysed information from being transmitted to the Incident Commander.

Detective Constable James Dyke was designated as the analyst, but when the Project Maple plan became operational, he in fact did not perform the role of intelligence analyst.

Regarding the processing of intelligence, it was Detective Sergeant Richardson's understanding that uniformed officers would provide their team leader with a written document regarding any occurrence. This information would be placed in a box to be reviewed by Detective Sergeants Richardson or Bell. However, what in fact occurred was that information was conveyed by word of mouth rather than in written form.

Detective Sergeant Bell was to report to Detective Sergeant Richardson all of his intelligence work regarding Ipperwash. However, there was no formal intelligence component to Richardson's function as primary investigator and file coordinator. It was not his role to assess the validity of information coming up through the intelligence unit. Detective Sergeant Richardson did not consider himself responsible for the intelligence unit under Project Maple.

Trevor Richardson said he never knew that he had any responsibility with respect to the intelligence unit under Project Maple. He believed Don Bell and James Dyke were in Ipperwash to work on intelligence. Detective Sergeant Richardson was not at the September 1 OPP meeting.

Another problem was that Inspector Carson did not have specific training in intelligence in 1995. Inspector Carson said that he would not make an operational decision based on intelligence. He explained at the hearings, "For the most part when we had concerns, I was able to send people over there." Clearly, intelligence did not have a central role for the Incident Commander of the Ipperwash operation.

As I discuss in the forthcoming chapters, the intelligence cycle in Project Maple breaks down at collection, collation, and at evaluation.

In the Ipperwash operation, raw data flowed from officers outside the intelligence unit to Inspector Carson, bypassing Detective Sergeants Richardson and Bell. As Don Bell said, there was no single filter for all raw data intelligence, and Inspector Carson was the “central repository.”

Detective Sergeant Bell agreed that the traditional method of collecting intelligence was not used in the Ipperwash operation. Reports were verbal, not written. The team leader of the intelligence unit under Project Maple agreed that a number of “tentacles” of information went directly to the Incident Commander and were not subject to the analysis available with one collection site. Prior to the events on the evening of September 6, Detective Sergeant Bell’s reports to the Incident Commander were generally verbal. Detective Sergeant Bell said he did not have sufficient time to make written reports.

A reliability assessment of the information was rarely conducted. Information was distorted by person-to-person verbal transmission. It does not appear that one person was given the task of sorting out all the information in the Ipperwash operation. According to the Project Maple plan, Detective Constable Dyke was designated as an analyst but he was an analyst in title only.

Detective Sergeant Bell did not have team meetings with officers Dyke, Whitehead, and Richardson to coordinate their information-gathering efforts over the course of September 1 to 6.

Training for intelligence operations was lacking, both for the Incident Commander and other senior personnel. It is important that the Team Leader of the intelligence unit report directly to the Incident Commander. This was not the case in Project Maple.

Don Bell prepared a memo for Inspector Carson in January 1996, in which he discussed concerns about the collection phase of the intelligence process. He said that parameters placed on intelligence “hindered the collection process which ultimately hinders the evaluation and reliability analysis.” Don Bell also felt that there should have been a single source transmitting the intelligence to the Incident Commander.

## **8.8 September 3, 1995**

Inspector Carson contacted Chief Superintendent Coles to update him on the operational plan and the meetings he had with MNR. On September 1, John Carson had informed Les Kobayashi, and either Peter Sturdy or Ron Baldwin, that



the OPP was involved in the planning process for the occupation of the park. MNR's role in relation to the injunction was discussed, as well as the prospect of installing video cameras in the park. Chief Superintendent Coles suggested that cameras be installed in various locations in and around Ipperwash Park.

Video cameras were placed at the gatehouse of the main entrance to the park and in the maintenance building to monitor activities in the event of a park occupation. These were the only two buildings in which cameras were installed. John Carson wanted video cameras in all the park buildings, but "technical challenges ... prevented that from being possible." No video cameras were installed outside any of the park buildings.

Chief Superintendent Coles testified at the hearings that the cameras that were installed were "not as many ... as [he] would have liked." In fact, when Chief Superintendent Coles came to the Ipperwash Park area during the occupation on September 5, he asked why cameras had not been placed in particular locations: "I was concerned that we didn't have them at the time." He was told there were great difficulties transmitting hydro to the cameras. No cameras, for example, were installed in the sandy parking lot next to the provincial park where Dudley George was shot the next day in a confrontation between the OPP and the occupiers.

Inspector Carson continued to receive additional information on the British Columbia occupation at Gustafsen Lake on September 3. Detective Inspector Hutchinson reported that First Nations people from Ontario were in the Gustafsen Lake area. Progress was slow, he said, and they were awaiting a decision from the court. John Carson wanted to be kept abreast of the British Columbia situation as he was worried that those events might have ramifications for the expected occupation of Ipperwash Park. Inspector Carson explained:

The potential concern was the behaviour in Gustafsen Lake. If it was seen to have brought a successful outcome, from the perception of the occupiers, [that] may be something that could be emulated at Ipperwash. What concerned me ... in the days just [preceding] Labour Day weekend, clearly the RCMP had come under fire from the occupiers in Gustafsen Lake, and that was certainly something I was very mindful of.

Inspector Carson also made contact with Peter Harding, the Superintendent of St. John Ambulance, to find out whether the organization had equipment to support the OPP during the park occupation at Ipperwash. The Incident Commander

was interested in a unit that could be used to facilitate communications for the OPP operation.<sup>3</sup>

The following morning, he met with Mr. Harding at St. John House. The OPP, he said, needed equipment for what he expected to be a peaceful demonstration at Ipperwash Park. The Incident Commander chose Communications Unit 444, which had telephone and radio systems as well as computer capacity. The trailer had a briefing room, in addition to the communications area. It was necessary for a service vehicle and St. John personnel to accompany this unit. The service vehicle carried gas and oil and other provisions to support the communications trailer.

Inspector Carson made no inquiries of Mr. Harding regarding the ambulance equipment. As Inspector Carson confirmed at the hearings, he was simply looking for a trailer.

OPP Commissioner O'Grady was well aware in summer 1995 that members of the Aboriginal community disputed the position of the Ontario government that it had title to Ipperwash Park. The Commissioner also knew that First Nations people might try to assume control of the park. The OPP Commissioner did not think it was appropriate for either himself or his officers to sort out who had title to the disputed land. That was the role of the courts:

... my feeling was our best course of action ... [was] to seek some direction from the court, which would suggest to the police what they should do. I just did not feel that I or any of my officers were competent to come to the correct conclusions because of a very long and disputed history that has been going on for some time. I just did not feel that we were competent to address that without some direction from the court.

Commissioner O'Grady thought the OPP should prepare for the event of a takeover of the provincial park. Although the Commissioner was not involved in the details of Project Maple, Chief Superintendent Coles had assured him that the principles of negotiation and keeping the peace were “ingrained” in the plan while the parties involved would seek an injunction and direction from the courts. Although the takeover of the park was not a certainty, it was Commissioner O'Grady's view that “what we needed to do was prepare for all eventualities and hope for the best.”

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<sup>3</sup> John Carson stated that the OPP had no vehicle that could be deployed in the area at the time.





## SEPTEMBER 4, 1995: THE OCCUPATION OF IPPERWASH PROVINCIAL PARK

### 9.1 Plans to Assume Control of the Park

Early in the evening of Monday, September 4, 1995, Labour Day weekend, First Nations people entered Ipperwash Provincial Park. Their intention was to assert control over this land and occupy the park. The First Nations people who initially walked through the park gate included descendants of residents of the Stoney Point Reserve, people from Kettle Point, as well as supporters from other areas.

Adult men such as Dudley George, Marlin Simon, and David George, teenage boys such as Nicholas Cottrelle, Wesley George, and J.T. Cousins, and women such as Tina George and Carolyn George were among the people who first entered the park at approximately 7:30 p.m. On Monday, September 4, 1995, when most campers had left the park for the day and for the season, Aboriginal people from other reserves and areas beyond Forest, such as Les and Russell Jewell from the United States, were also among the group who occupied the park.

The decision to enter Ipperwash Park on Labour Day 1995 was not impulsive. Several Aboriginal witnesses, including David George and Stacey George, confirmed that discussions took place in advance of the September 4 event. David George said plans to assume control of the provincial park were made about one week before the September 4 occupation. It was a group decision that First Nations people would enter the park on Labour Day when the park closed for the season and campers and other park users vacated the area.

Clayton George said a meeting took place on Matheson Drive on the eastern edge of the park on an evening in the week before Labour Day. Glenn George, Les and Russell Jewell, Dudley George, and he believes Roderick George, Stewart George, and Dave George were among those involved in the discussion to occupy the provincial park. As Clayton George said, it was evident from the participants' comments that the group "wanted to take over the park peacefully ... to protect [their] ancestors' graveyards."

On the morning of September 4, the First Nations people made concrete plans as they were eating breakfast at the kitchen facility at the barracks in the built-up area. As Marlin Simon explained, people congregated "to cook



breakfast there every day, so everybody would kind of meet there first thing in the morning:”

... people were sitting around, they were having coffee at the kitchen ... and everybody says, “Well, park’s closing down. Are we going to go in there or not?” So everybody said, “Yeah, sure.”

About two dozen people participated in this discussion, according to Marlin Simon, all of whom were residents of the built-up area at the army camp. Marlin Simon said at the hearings that

[i]t was kind of something everybody sat around talking about ...

... everybody knew it was something that had to be done, so it was kind of a topic of discussion ... every so often.

The First Nations people had informed OPP officers on several occasions before the September 4, 1995 occupation that they would reclaim Ipperwash Park, and the OPP had been making preparations for a possible park occupation since August. As Kevin Simon said, on more than one occasion prior to their entry onto that property on the 4th, they took the opportunity to advise members of the OPP that the park belonged to their people. Prior to September 4, 1995, Mr. Simon had discussions with the OPP about reclaiming the park and told them it was going to happen some time, but he “never knew of an exact date.”

Kevin Simon told police officers that Ipperwash Park was part of the original Stoney Point Reserve. His brother Marlin similarly testified that he told park officials in 1995, 1994, and “maybe even back to ’93” that First Nations people would take over the park. Warren George also testified that the OPP were told in the summer of 1995 that First Nations people would assume control of the park.

When First Nations people were living in the army camp, they would go down Matheson Drive to access the beach. Police who patrolled the area occasionally exchanged words with the First Nations people. As Kevin Simon said, “they’d pull up on the beach, have their little quick discussion ... and just tell [the police], ‘[I]t’s our land, it’s coming soon. You guys should deal with it.’” According to Mr. Simon, the police officers generally responded with laughter and disbelief that First Nations people were entitled to this property. When asked at the hearings why he did not pursue discussions with the police, Mr. Simon replied that he “never really thought that there’d be any point to further discussions with them if they weren’t going to take it seriously.”

## 9.2 Reasons for Entering the Park

First Nations witnesses discussed the reasons they decided to occupy Ipperwash Provincial Park on September 4, 1995. Warren George expressed the views of many Aboriginal witnesses that the provincial parklands were part of Aazhoodena, their traditional territory. There was a firm belief that the Stoney Point people had a right to this land, and that historically the Indian Agents had not adequately represented the interests of residents on the original Stoney Point Reserve. Kevin Simon echoed the views of many supporters of the occupation when he said the park was part of their ancestral territory, it was part of their people's land.

Another reason for assuming control of the park was to protect the sacred burial sites in the park. Occupiers such as Warren George, Nicholas Cottrelle, Leland White, and Marlin Simon had been told by their respective grandfathers that graves were in the park. Elwood George testified that his Uncle Fletcher was buried in the park. Aboriginal witnesses said burial grounds existed by the pump house and maintenance shed in the park. Abraham George told his children that there were graves along the road from the maintenance building to the pump house. Stewart George said that his father Abraham mentioned "graves being in the park where his younger brother was buried ... There was a road going from the maintenance building to the pump house ... it was along that road he said that Fletcher was buried ... [H]e told us that it should be blocked off ... to let them rest in peace." Also, a medicine man had determined that burial grounds were on the roadway leading to the maintenance shed.

First Nations people were disturbed that the government had not taken measures to erect a fence around the gravesites in the park to ensure the sacred grounds were protected, maintained, and respected. Roderick George said that when the park was established, the government had agreed to protect the graves of the Aboriginal people. Permitting the land to be used as a provincial park where people camped and picnicked on or near the gravesites, his son Nicholas Cottrelle agreed, was disrespectful to their deceased ancestors and to the Aboriginal people as a whole. This reflected the views of many First Nations witnesses, including Dudley George and Marlin Simon:

... people were camping, partying and drinking, and having all kinds of whatever on a place that we consider ... pretty sacred.

Elwood George stressed that the "people that owned that park ... had their chance to fence off those graves." He stated, "They were completely ignorant of our beliefs," and continued:



*It's our duty to protect people, whether they've passed on, as well as the people in the future, meaning the future generations ... We would have to reclaim those lands to protect those graves. (emphasis added)*

A further reason put forth for the occupation of Ipperwash Park in September 1995 was that members of the public who used the park to swim and camp often harassed First Nations people, preventing them from freely enjoying the beach and their land. Kevin Simon said, “[W]e had a lot of people that were coming from the park creating a lot of problems with our people”; there was a need “to protect our people” from harassment.

The occupiers who entered the park in the early evening of September 4 believed the provincial park belonged to the Stoney Point people. Their grievances were directed both at the Ontario and federal governments. They were also frustrated that the Stoney Point Reserve had not been returned after World War II as the federal government had promised in the 1940s and again in 1994.

Aboriginal witnesses made it clear at the hearings that the process of regaining their land was moving much too slowly. As Roderick George and others said, by assuming control of the provincial park, the occupiers hoped to get the attention of the federal government. Dudley George believed, said Glen Bressette, that the First Nations people should take over the park to get “media attention.” Glen Bressette agreed with Dudley that the occupation of the park was necessary to attract the media, which the Aboriginal people hoped would pressure politicians to return their land.

### **9.3 The OPP Continues Its Preparations for a Possible Occupation of the Park**

As mentioned in Chapter 8, OPP meetings took place at the end of August and in early September 1995 to prepare for the possible occupation of the park.

In the early afternoon of September 4, hours before the Ipperwash Park occupation, Inspector Carson contacted Inspector Frew of the London Police Department to discuss the availability of light armoured vehicles (LAVs) in Ipperwash. General Motors Diesel in London, Ontario, constructed armoured vehicles for the military. The London Police had an arrangement with General Motors for the use of these vehicles by its officers who had been trained to operate them.

Inspector Carson wanted access to armoured vehicles for the protection of his officers. If matters escalated in the Ipperwash area — if OPP officers were injured or targets of gunfire — he wanted these vehicles to transport his officers and

equipment to a safe location. From his conversations with Inspector Hutchinson in British Columbia, Inspector Carson learned that military armoured vehicles were used for such purposes at Gustafsen Lake. Inspector Frew told John Carson that it was necessary to seek the approval of London's Deputy Police Chief Elgin Austin and to contact GM Diesel.

Preparations were also made with respect to video recording in the park area. Both Chief Superintendent Coles and Inspector Carson thought that video cameras installed in and around the park would be an important source of intelligence. In the event of a First Nations occupation, the actions of the Aboriginal people should be monitored to enable the OPP to make appropriate and safe decisions.

Prior to the occupation, a video was taken of the buildings in Ipperwash Park. Video cameras were installed by the OPP at the maintenance building and at the park kiosk at the main entrance to the park. However, video cameras were not placed in all the park buildings because of technical problems encountered by the police. Nor were cameras installed in areas outside the park such as the sandy parking lot, the site at which Dudley George was killed two days later in a confrontation between the OPP and First Nations people.

## 9.4 Confrontation with Roderick and Stewart George Before the Park Occupation

An altercation occurred on the afternoon of September 4 between two Aboriginal men and the OPP before the occupation of Ipperwash Park. Roderick and Stewart George were the men involved in this incident. At that time, Roderick and Stewart George did not know that people from Stoney Point would be occupying the provincial park that day.

Stewart George, his brother Roderick, and others had gathered on part of the beach known as "The Pass," as it allowed access from the beach, over sand dunes, to a road built by the military. They were approximately a quarter mile from the park property. First Nations people were relaxing, eating, and drinking beer on the beach. Roderick George said he consumed about twenty bottles of beer that day. Stewart George also said he drank "quite a few" beers that afternoon.

People at the gathering were told that police cars were parked at the end of Matheson Drive near the lake. Roderick George thought this was unusual because police cruisers had not been seen in this area since the Stoney Point people had occupied the base. Stewart George and his brother Roderick decided to drive to the area to confront the police because this was First Nations land:



... we felt that is our territory and they ... had no business coming down there. So we went up and told them that they weren't wanted, and we told them to leave.

Stewart George was a passenger in Roderick George's dark blue Trans Am. They drove to the end of Matheson Drive to the site of the police cars.

Constable Wayne Jacklin and his partner Constable Myers were patrolling the north end of Matheson Drive near the beach at about 4:00 p.m. Shortly after they arrived, a Trans Am car driven at high speed by Roderick George approached them and came to a "sliding stop." Stewart George ("Worm") abruptly opened the car door, which made contact with the police cruiser and caused some minor damage to the front bumper. Detective Sergeant Richardson also witnessed the car door of the Trans Am hit the police cruiser. Roderick George explained at the hearing that the latches on the door did not operate properly as the door pins were worn and needed replacement. The occupants of the car appeared to be intoxicated. Officer Jacklin saw an open bottle of alcohol in the vehicle. Detective Sergeant Richardson thought the driver was impaired because he could smell alcohol.

A heated exchange ensued. Stewart George was told by a police officer that he was under arrest for mischief, to which Mr. George replied, "I told him [the officer] that he was under arrest for trespassing." An argument followed regarding the ownership of Matheson Drive. The officer claimed it was a public access road, to which Roderick George responded, "No, it's not. It's on our territory ... it belongs to us."

Other Aboriginal people began to congregate in the area. They yelled at the OPP officers to "get off" Matheson Drive, as this was "their land." This was not the first time Constable Jacklin had heard First Nations people claim ownership of Matheson Drive.

Tension was mounting and Constable Jacklin called for "backup." He told the two men they could be arrested as there had been *Criminal Code* violations: dangerous operation of a vehicle, driving while impaired, and mischief, for the damage to the police cruiser. Constable Jacklin decided not to execute the arrests because the situation was "escalating" and he thought it was "more prudent to disengage."

Constables Gransden and Dougan were parked on Army Camp Road when they heard a request shortly after 4:00 p.m. on the police radio for assistance on Matheson Drive. Their assignment was to observe First Nations activity in the area of the army camp, and to report anything significant to their supervisor,

Sergeant Korosec. Both Constables Gransden and Dougan were members of the Emergency Response Team (ERT). The two constables drove to Matheson Drive near the beach.

Sergeant Korosec and other ERT officers arrived. Roderick George told them that Matheson Drive and Ipperwash Park belonged to the First Nations people and the OPP “had no business on the roadway.” Then Mr. George threatened to confiscate the police cars.

When Constables Gransden and Dougan arrived, they saw several Aboriginal people near a blue Trans Am in a verbal confrontation with the OPP. As they left their police cruisers, they heard a heated exchange between Sergeant Korosec and Roderick George over the ownership of Matheson Drive. Mr. George claimed that this section of Matheson Drive belonged to First Nations people. Sergeant Korosec took the position that the Town of Bosanquet owned the property.

Sergeant Korosec stood a couple of feet away from Roderick George who was visibly agitated. Mr. George spoke in a loud voice and demanded a meeting with Sergeant Korosec’s superiors. The Sergeant gave him Inspector Carson’s name. Roderick George said he planned to contact Staff Sergeant Charlie Bouwman to arrange a meeting with Inspector Carson.

Roderick George did not recall the discussion with Sergeant Korosec about Inspector Carson or Staff Sergeant Bouwman. Nor did he follow up with Charlie Bouwman, an officer at Grand Bend, to arrange an appointment with Inspector Carson.

While Sergeant Korosec was speaking to Roderick George, Constable Jacklin claimed he had an exchange with “Worm” (Stewart George), which concerned him. Stewart George allegedly asked, “How many ... rifle sights do you think you’re in?” Trying to defuse the situation, Wayne Jacklin replied, “I hope they’re a good shot because your head’s between mine and theirs.” Constable Jacklin considered Worm’s threat “serious.”

At the hearings, Stewart George denied that he made a statement to the effect of “[H]ow many gun sights do you think are aimed at your head from the sand dunes?” He also denied that he made a statement to an officer about crossbows. Stewart George claimed he would not have made these statements, as he knew he could be criminally charged for uttering death threats.

I find it surprising that Constable Jacklin failed to include in his notes Stewart George’s threatening comments about Constable Jacklin being in “rifle sights.” Constable Jacklin conceded at the hearings that this was a “major oversight.”

When Constable Whelan and his partner Constable Japp arrived at the scene, they were told to provide security to the OPP officers who were dealing with the



occupants of the Trans Am. They positioned their cruiser a short distance from the “commotion,” and watched “crowds ... starting to build” as First Nations people gathered from the army camp and from the provincial park.

Constable Whelan claimed that a vehicle with “rebel plates” (the Confederate flag) slowly backed up to Constable Whelan’s cruiser. An Aboriginal male opened the trunk, according to Whelan, “reached in” and “started to bring out ... a butt or the stock of what [he] believed to be a firearm.” A second Aboriginal man “motioned with his hands in a downward motion,” which Constable Whelan interpreted as meaning “leave it in the trunk.” The man complied. Constable Whelan stared at the first Aboriginal man for what “seemed like a long time,” but in fact was “probably only seconds.”

Roderick George testified that he did not have a rebel flag on his car. Similarly, his brother Stewart said at the hearings that he did not see a car with “rebel plates.”

Other officers did not observe a rifle butt or any other weapons carried by First Nations people at this incident. Constable Whelan told Sergeant Korosec and Detective Sergeant Richardson about this incident. Sergeant Korosec received Constable Whelan’s report at approximately 4:45 p.m.

Officer Whelan claimed he told Constable Jacklin he saw a rifle stock in the trunk of a First Nations person’s car. However, there is no notation of this conversation in Constable Jacklin’s notes. Other officers at the scene, such as Constable Dougan, did not see any weapons belonging to the Aboriginal people in the incident on Matheson Drive on the afternoon of September 4.

In an attempt to de-escalate the situation, Sergeant Korosec instructed the officers to leave the area.

After this incident, Roderick George went to the Kettle Point Reserve.

Stewart George was charged with mischief for intentionally damaging a police vehicle, but the charges were ultimately dismissed.

At approximately 4:45 p.m., Sergeant Korosec informed Inspector Carson about the confrontation with the Aboriginal people on Matheson Drive. Sergeant Korosec told Inspector Carson that eight ERT team members were stationed in this area and officers were also on standby at Grand Bend. The park was almost vacant and the undercover trailer was in the process of being transported out of the park.

There were also reports from Detective Sergeant Trevor Richardson that the Aboriginal people he had interacted with at 4:00 p.m. were intoxicated, and that an officer had observed the butt of a rifle in the trunk of a car. The Aboriginal man did not remove the rifle from the car. Inspector Carson thought there could be weapons because of what an officer had seen in the trunk of the car, but he was not concerned they would be turned on the OPP.

## 9.5 Trees Felled on Matheson Drive

Shortly before 6:00 p.m., Constables Gransden and Dougan heard a chainsaw and the sound of falling trees. The officers were parked at the intersection of Army Camp Road and Matheson Drive on patrol.

Constable Gransden climbed onto the hood of his police car and saw “trees being felled” across Matheson Drive where the road turns toward the beach. Neither officer was concerned. They conveyed their observations on the police radio.

It was evident to the officers that trees were being cut in order to close the roadway and block vehicle access. With binoculars, they also saw First Nations people lock a gate at Matheson Drive. This event was reported to Sergeant Korosec who thought things seemed to be “heating up a little bit.”

## 9.6 First Nations People Enter Ipperwash Park

The men, women, and teenagers who congregated in the early evening on Labour Day 1995 for the purpose of asserting ownership of Ipperwash Park approached the park from different directions. Some, such as Carolyn George, came from the beach. Many others, including David George, Clayton George, and Marlin Simon, drove in a convoy of seven or eight cars from the built-up area to Ipperwash Park. They travelled down a road inside the military base and proceeded north to the beach to a gate at the east side of the park. Kevin Simon happened to be on Matheson Drive at this time and noticed a gathering of one to two dozen people. He joined the group as they entered the park.

First Nations people assembled at the east gate of Ipperwash Park. The gate was chained and locked, barring entrance to the provincial park. Large cement blocks had been placed at this entrance in the summer to prevent campers from accessing the park through this gate. These blocks had been removed prior to September 4. The Aboriginal people assumed that MNR officials or the police had removed them, which they considered out of the ordinary.

They noticed police officers in the area monitoring the group. The OPP appeared to be expecting the First Nations people.

Constable Gransden and other OPP officers were in the provincial park after it had been closed for the season to overnight camping. It was prior to 7:30 p.m. when they saw a group of First Nations people on Matheson Drive trying to break a lock on the link fence gate with a pair of bolt cutters. They were trying to gain access to Ipperwash Park. Constable Whelan requested police assistance at the east gate of the park. There were eight to ten officers and about ten to twenty First Nations people in the area.



Sergeant Korosec arrived and spoke to Bert Manning who was on the inside of the park fence. Mr. Manning announced that the First Nations people were occupying the park. Sergeant Korosec replied that unless Mr. Manning had an official document to the contrary, Ipperwash Park was provincial property — the park officially closed that evening and any person found on the property would be considered a trespasser. Mr. Manning asserted that this land belonged to the First Nations people. He spoke in a calm manner. Sergeant Korosec tried to encourage Mr. Manning not to take any action at this time.

Glenn George appeared with other First Nations people. He yelled profanities and said they were assuming control of the park. Glenn George suggested that residents west of the park to Ravenswood be cautioned that they would be taking “their land next.”

David George had retrieved a tire iron from his car in order to break the lock on the fence at the park gate. As he was about to knock off the chain, a police officer warned, “I wouldn’t do that if I w[ere] you.” David George did not use his tire iron.

Sergeant Korosec tried to dissuade the Aboriginal people from cutting the gate lock, but to no avail; “the gate was pulled open,” and “Native vehicles and Native people entered the park.”

With bolt cutters, Nicholas Cottrelle severed the chain and lock on the park gate held by Marlin Simon. As David George said, “the chain was cut,” “the gates were open,” and everybody entered the park.

Nicholas Cottrelle “laid some tobacco down” on the ground and “asked the Creator ... [to] watch over all of [them].”

The OPP made no attempt to prevent the First Nations people from entering Ipperwash Park in the early evening of September 4.

Some First Nations people carried sticks and bats into the park. Glen Bressette had a club in his hand, which he planned to use to either threaten or ultimately force the police to leave the park. David George thinks he also might have had a bat or stick with him when he entered the park on September 4. The occupiers scattered to different areas of the park. Several occupiers, including Dudley George, Glen Bressette, and Wesley George, walked to the park store. They were met by police officers and MNR officials. The occupiers told these officials they were assuming control of the park.

Several First Nations people made their way to the maintenance buildings where MNR officials were present. The park authorities did not resist the entrance or inspection of the maintenance buildings by the occupiers.

OPP officers asked the occupiers to allow them to evacuate the remaining campers in the park. Kevin Simon and his brother Marlin followed the police cruisers as the OPP asked campers to leave Ipperwash Park.

Kevin and Marlin Simon then made their way to the gatehouse. First Nations people were present as well as OPP officers and about six police cars. Kevin Simon and other occupiers approached the OPP parked by the gatehouse and asked them when they planned to leave. The response was that the police would remain in the park until they were ordered by their superiors to leave the area.

The OPP made no attempt to arrest any of the First Nations people; it was neither feasible nor prudent in the circumstances and “would have escalated the situation.” Sergeant Korosec instructed the ERT officers to evacuate the remaining people in the park quickly and safely. He called the OPP communication centre to alert them to the occupation of the park.

Constable Gransden and the other officers proceeded to evacuate day users from the park. The OPP escorted civilians out of the park.

Don Matheson, the Assistant Park Superintendent, notified Park Superintendent Les Kobayashi at his home of the park occupation. Mr. Kobayashi immediately changed into his uniform and made the forty-five-minute drive to Ipperwash Park.

When Mr. Kobayashi arrived at the front gate of the park, he saw Don Matheson and the OPP officers. It was just before 8:30 p.m. Sergeant Korosec and Mr. Matheson briefed him on the events.

OPP officers remained in the park as night set in and it became dark. The First Nations people repeatedly asked the police to leave the park. The officers spent time making notes and trying to identify particular First Nations people.

## 9.7 Incident Commander Notified of Park Occupation

It was about 7:40 p.m. when Sergeant Marg Eve informed Inspector Carson that First Nations people had cut the lock and entered Ipperwash Park. He learned that Bruce Manning and Glenn George were involved in the park occupation as well as a dozen vehicles. The Aboriginal people had made it clear they intended to remain in the park. Inspector Carson immediately contacted A/D/S/Sgt. Wright and instructed him to travel to the Forest Detachment. ERT Teams 3 and 6 were placed on standby.

When Inspector Carson arrived at the OPP Detachment, he assigned Constable Johnson to scribe duty. The role of the scribe is to shadow the Incident Commander and to make notes of discussions and decisions made by the Incident Commander. The command post was initially set up in the OPP Forest Detachment until the mobile command trailer arrived from London.

Sergeant Korosec made contact with Inspector Carson shortly before 9:00 p.m. Nine OPP cruisers remained in the park. Inspector Carson wanted ERT officers to secure the area near the bridge as well as the park maintenance building



where gasoline and park equipment were stored. Inspector Carson instructed ERT officers to hold their positions in the park. The OPP's plan was to cohabit or coexist with the First Nations people within the park boundaries. But Inspector Carson stressed that safety "for ERT is #1" — "if safety [is] threatened, use cruiser to go through fence." The OPP were instructed to leave the park if police safety was at risk.

## **9.8 Escalation of Events at Ipperwash Park: Flares and Damage to a Police Cruiser**

Some of the Aboriginal people who did not initially enter the park on September 4 fully supported the acts of their friends, siblings, and children who severed the lock on the gate and entered to assume control of Ipperwash Park.

The news quickly spread about events at Ipperwash Park. Shortly after entering the park, Tina George contacted her father, Abraham, and brother Elwood in Kettle Point, who immediately drove to the park. Other people, such as Stacey George, arrived at the park later that evening when told that First Nations people had occupied the park.

Marcia Simon believed the Ipperwash Park occupation to be premature. She thought the existing tensions in her community should be addressed before the Aboriginal people took control of the park: "I felt the timing wasn't right to go in there," and that there was a need "to get our community a little bit better running before they tr[ie]d to take on anything else."

Nevertheless, once the decision was made and acted upon, Marcia Simon decided to fully support the park occupation. She went to the park in the early evening as it was starting to get dark.

As mentioned, Roderick George ("Judas") was another person who did not know the Stoney Point people would assert control over Ipperwash Park that day. Even in the late afternoon of September 4, he was unaware that his son, members of the community, and his friends had decided to occupy the provincial park.

Roderick George went to Kettle Point after the altercation between the OPP, his brother Stewart, and himself. Roderick was nursing a sore foot as he suffered from gout. He learned from his mother that Aboriginal people had entered Ipperwash Park, and that his father Abraham ("Hamster") and others had left to support First Nations people at the provincial park.

Roderick George was anxious to get to the park. He telephoned his wife Gina at work and asked if she could find a replacement, as he needed a ride to the park. Roderick George "considered [himself] to be impaired." He had consumed a large quantity of beer earlier that day and was not capable of driving a car.

Gina George soon arrived and the couple travelled along Highway 21 through the main gate of the built-up area of the army camp, north on the road that runs parallel to Army Camp Road, and east on Matheson Drive. They entered the park at the east entrance through the open gate.

Upon their arrival, they saw several First Nations people congregated near the park store as well as police officers, one of whom was Detective Constable George Speck. About three police cars were parked nearby. It was almost 9:30 p.m. A fire, built earlier that evening by the occupiers, burned near the park store. Roderick George spoke with his father, Abraham, and his son Nicholas Cottrelle, who informed him that the OPP refused to leave the park.

Just before 9:30 p.m., about two hours after the First Nations people entered the park, Sergeant Korosec radioed for police assistance. Night had set in and it was dark.

Minutes before this call, tension had escalated between the occupiers and the police. About twelve officers and their cruisers were parked at the kiosk at the front entrance to Ipperwash Park. First Nations people remained nearby in the darkness.

Flares were thrown in the direction of the officers. A flare narrowly missed Constable Parks. Detective Constable Speck told the group of Aboriginal people to “cut it out before somebody got hurt.” The occupiers yelled at the officers to get out of the park.

It was fifteen-year-old Wesley George who threw the strobe lights or flares at the OPP officers. His father Elwood George had given him these flares, which were shaped like a cupcake. They were one-inch in diameter and had a thick wick. When the flares were ignited, they emitted a small flame or spark, bright colours, and smoke.

Kevin Simon, Marlin Simon, and Nicholas Cottrelle saw Wesley George throw a couple of packs of these flares at a group of police officers. Kevin Simon thought one of the flares “may have bounced” off the chest of a police officer. David George also believed that Wesley George “might have grazed one officer ... on a pant leg or something.” But, in fact, no officers were hit by the flares.

Roderick George approached the police and stood near one of the cruisers. In a loud and threatening voice, he demanded to speak to “the head OPP man.” He had a three-foot stick in his hand and was agitated. He yelled profanities and told the police to leave the park. Roderick was “belligerent and face to face” with Sergeant Korosec, who told him the OPP had no intention of vacating Ipperwash Park. Roderick George began a countdown for the police to get into their cars and leave what he considered to be First Nations property. Tension was “high” and “escalating.”



Roderick George continued to yell at the OPP to leave the park. He called George Speck “a fucking Nazi,” and ordered the officers to “get off the land” in profane language. When the police officers did not comply, Roderick George returned to his car, retrieved a wooden crutch, and “issued a twenty-second count-down for them to leave.”

As Roderick (“Judas”) approached the police, his brother Elwood and his son Nicholas quickly gathered Aboriginal men to stand behind Roderick. Elwood George said:

I jumped up and asked the guys to come and stand behind Judas ... to let him know that he wasn't alone ... I guess it would give him a stronger sense of, I can't explain it — a feeling. He [would] know that we were backing him up. I guess that's the way to put it.

Glen Bressette said some of the occupiers had clubs, sticks, or tree branches in their hands at this time. Elwood said that “one of the officers started talking back,” and Kevin Simon noticed OPP officers were laughing. Because of the police comments and reaction, Roderick George told the police that they now had only ten seconds to leave the park.

Roderick George estimated that about fifteen occupiers closed in on the six to seven police officers, who were visibly tense. The OPP did not move after Roderick George had counted down to “one.” Roderick took his wooden crutch and hit the rear window of the OPP car. Mr. George explained, “[T]hey didn't leave so I smashed the back window in.” The occupiers shouted at the police. Kevin Simon heard “the glass as it was falling out.” Although fourteen-year-old J.T. Cousins did not see the altercation, he also heard the “big smash” and saw that “the rear window in the car was smashed.”

Constable Gransden and other OPP officers saw Roderick George swing his stick which “smashed the rear window” of the police cruiser; the “whole back window shattered out of the car,” denting the trunk. It was obvious to Sergeant Korosec, Constable Gransden, and the other officers that Roderick was “very upset about us being in the park ... hostile or angry that we were there, and he wanted us gone.” The police did not draw their weapons and the First Nations people did not have firearms.

Glenn George and Roderick George approached Detective Constable Speck in his police cruiser. Glenn George asked about the OPP warrant for him, and Speck explained it was for failing to appear in court. The Detective Constable was told “the Elders have a warrant” for him and First Nations people would “lock” him “up in their jail.” Constable Parks received a similar threat. Roderick

George continued to yell profanities and ordered Detective Constable Speck and the other officers to leave the park area.

Detective Constable Speck “didn’t make much” of that comment. He thought it was “just bravado ... although they did have a jail at their disposal on the base.”

The OPP officers decided not to arrest Roderick George as they thought it would heighten the tension between the First Nations occupiers and the police. Sergeant Korosec believed it would precipitate a “fight.” The officers knew the occupiers outnumbered them, and they did not want to compromise police safety.

Sergeant Korosec was “really concerned” that flares had been thrown at the officers and the back window of a police car had been “smashed.” Women and children were in the park, and there were more Aboriginal people than OPP officers — “it was not a good spot to be,” and Sergeant Korosec was “in charge.” Sergeant Korosec contacted Inspector Carson, described the situation, and suggested that the OPP officers withdraw from the park. Inspector Carson granted permission for the OPP to leave the park — “do what is safe.”

Sergeant Korosec instructed his officers to pull out because he did not want anyone to be hurt. The officers left Ipperwash Park in compliance with Sergeant Korosec’s orders shortly after 9:30 p.m. and returned to the OPP Detachment in Forest.

On September 5, Detective Constable Speck travelled to Sarnia to swear informations for Stewart George and Roderick George on charges of mischief over \$5,000, and for David George for possession of a weapon (a flare) for a purpose dangerous to public peace and for assault on a police officer.

At the hearings, David George adamantly denied that he had thrown flares at the OPP on the evening of September 4. Kevin Simon agreed:

I had seen, it was Wes. He was kind of standing behind Dave and I couldn’t understand why the police had thought it was Dave, and such a tall guy, a shorter guy standing behind him, throwing that firecracker, and it was rolling around there, you could see those guys were stepping on it. It didn’t really seem like a very big deal.

The charges against David George were ultimately withdrawn.

## 9.9 The Decision to Serve Notice of Trespass on the Occupiers

MNR Park Superintendent Les Kobayashi arrived at the OPP Forest Detachment after leaving Ipperwash Park and met with Inspector Carson and A/D/S/Sgt. Wright. It was clear at that time that the occupiers would not leave the park, that the OPP could not remain at the park site, and that cohabitation, that is, having



officers in the park with the occupiers, was not a “viable option.” Instead, the OPP would patrol the perimeter and other areas in the vicinity of the park.

At the meeting, Mr. Kobayashi discussed with Inspector Carson and A/D/S/Sgt. Wright the approximately 1,000 gallons of gasoline in a tank near the maintenance shed. Mr. Kobayashi was concerned the occupiers could use this flammable material for explosives.

There were also discussions about posting signs to the effect that the provincial park was closed for the season, and serving a trespass notice on the occupiers. Inspector Carson wanted to make it clear to the First Nations people that the camping season had ended, the park was now closed, and they were trespassing. It would be necessary for the Ministry of Natural Resources to seek an injunction if the occupiers received this notification and continued to refuse to leave the property. Inspector Carson’s “primary” concern was that he did not “want anybody to get hurt ... [B]asically we’re treading lightly as we go, because we [had] just had a confrontation with Korosec’s people and we didn’t want another confrontation of any sort.”

It was decided that the trespass notice would be served on the occupiers that evening. Inspector Carson also considered this an opportunity to enter into a dialogue with the First Nations people to learn their intentions:

I was trying to get a sense from the occupiers [of] what their intentions may or may not be, and basically I was trying to get a temperature on, you know, if they had anything to say or what they intended to do. If we get down there and have some dialogue, we might get some sense of what we could expect.

Following the meeting with Inspector Carson, Les Kobayashi called Peter Sturdy to advise him of the situation.

Peter Sturdy had received phone calls at home earlier that evening to alert him to the park occupation. Mr. Sturdy assumed Mr. Kobayashi was at the OPP command post in Forest based on the meetings at OPP Headquarters on September 1. He thought MNR officials Les Kobayashi and Ed Vervoort would be working out of the OPP command post during the occupation.

When Mr. Sturdy received word of the occupation, his reaction was surprise and concern. He was surprised because he had hoped for a better outcome. The MNR contingency plan, drafted before September 4, was for the purpose of securing the park facilities and evacuating the park. It was not to deal specifically with the occupation, which was a police matter. Parts of the contingency plan had been implemented in late August and early September — assets were

moved off site, computer files were secured, and money was removed from the park. The MNR had established a critical incident team to act in conjunction with the OPP.

An important component of the contingency plan was to conduct an orderly evacuation of the provincial park if necessary. There was no need to implement that part of the plan on September 4 because the occupation of the park occurred after virtually all the campers had left the site. This was the last weekend in the summer and, because of children's commitments to school, campers usually left the public park during the day. Typically, on Labour Day afternoon, there might be a few day users or local people walking through the park.

At approximately 10:00 p.m., Mr. Kobayashi directed that Ipperwash Park was officially closed for the season.

Inspector Carson distributed Project Maple books to some of the senior officers shortly before 10:00 p.m., including A/D/S/Sgt. Wright and Detective Sergeant Richardson.

Some of the OPP officers believed it was possible they could gain control of the park kiosk as only one Aboriginal person, Roderick George, occupied it. However, Inspector Carson did not think this was a good idea. "Let's be careful," he said, as there had been previous confrontations that day between the OPP and Roderick George — "public safety" remained a concern for the Incident Commander. Inspector Carson thought that "while it would have been preferable to be able to cohabit, that didn't seem to be a very viable option." Roderick George's behaviour was "certainly a concern at this point in time," and Inspector Carson "wanted to make sure that Mark Wright, and anyone else involved, understood that [they were] not going to sacrifice anybody's safety in order to move inside the park."

Sergeant Korosec arrived at the OPP Detachment to brief Inspector Carson on the night's events at approximately 10:30 p.m. They discussed the throwing of flares. Sergeant Korosec reported that the area was unsafe — "people" are "coming" to Ipperwash Park "from everywhere." He reminded Inspector Carson that an officer had seen a gun in the car of a First Nations person earlier that day. There was also Glenn George's threat that Ravenswood was next. The occupiers wanted a meeting with the OPP the following morning, "after other Natives have arrived." Inspector Carson did not think the First Nations people at the park would use guns in their interactions with the OPP.

Inspector Carson instructed Sergeant Korosec to continue "perimeter patrol" of the park throughout the night.

Inspector Carson wanted to know the identity of the spokesperson for the occupiers so the trespass notice could be served on that individual. Sergeant



Korosec suggested Bert Manning might be receptive to service of the documents. He was reluctant to suggest Roderick George, given his hostile and agitated conduct that day. A/D/S/Sgt. Wright spoke to Constable Vince George who agreed to accompany Les Kobayashi when he served the trespass notice on the occupiers. Inspector Carson assigned four police officers and two vehicles to accompany them. The Incident Commander stressed “safety is number 1,” and said, “[I]f problems are encountered, get out.” He did not want either the First Nations people or his officers to sustain any injury.

Inspector Carson contacted Chief Superintendent Coles to brief him on the events of that evening. He also told Chief Superintendent Coles that federal MP Rose-Marie Ur, who represented Lambton-Kent-Middlesex riding, had contacted the OPP Forest Detachment. Inspector Carson had assured her that the OPP had adequate resources and were working with MNR officials to address the issues surrounding the park occupation.

Ron Fox, the OPP officer seconded to the Ministry of the Solicitor General as Special Advisor, First Nations, received a call at home from Inspector Carson at about 10:15 p.m. He was told approximately “forty Natives” had occupied Ipperwash Provincial Park that evening, and problems had been encountered with First Nations people in the afternoon. Ron Fox also learned that there would be an attempt to serve the trespass notice that night.

The purpose of Inspector Carson’s call was to inform Ron Fox of events at Ipperwash Park. This was because “as the MNR start[ed] to develop their steps to seek the injunction, he would be the go-to guy, so to speak, at the Ministry that could assist with police information.” “There would be some requirement of information in order to move on the injunction and by informing Ron Fox, he would have up-to-date or accurate information of what we had experienced so far [so] that he could help advise the people from the MNR as they develop[ed] the application.”

Mr. Fox received another call from Inspector Carson shortly after 11:00 p.m. He was told that the police had withdrawn from the park, that the area was quiet, and that the OPP would “hold the perimeters and wait for daylight.”

As I discuss in the following chapters, direct contact between Ron Fox and the Incident Commander was inappropriate. Mr. Fox, seconded to the Ministry of the Solicitor General, was outside the OPP chain of command and should not have been in direct contact with Inspector Carson. This is important to prevent both actual and perceived political interference in police operations.

Shortly after 11:00 p.m., Inspector Carson instructed A/D/S/Sgt. Wright to contact St. John Ambulance in London for the transfer of the mobile command unit to Forest.

## 9.10 Attempt by MNR/OPP to Serve Legal Documents on the Occupiers Fails

Park Superintendent Les Kobayashi and Constable Vince George walked down the dark road leading to the park kiosk shortly after 11:00 p.m. They were flanked by eight to ten ERT members. The officers walked on each side of the ditch and were concealed. Constable Poole, one of the officers, scanned the area with night vision equipment.

Constable George was asked to accompany the MNR Park Superintendent to Ipperwash Park beyond the cement barricades, to identify the occupiers' spokesperson, and to serve the trespass notice. It "seemed odd" to Constable George that documents were being served in the night. At no time that evening did he consider his role to be that of a negotiator.

Constable George had no anxieties about his safety as he walked toward the provincial park. He was "dealing with relatives" and did not have "much of a concern regarding going in." Les Kobayashi conveyed no anxiety to Vince George as they attempted to serve the First Nations people. Although the Park Superintendent felt secure with the OPP support and did not feel endangered, he was uncomfortable serving the document in the late night darkness. The trespass notice read:

September 4, 1995

To Whom It May Concern,

I[,] Les Kobayashi, Park Superintendent for Ipperwash and Pinery Provincial Parks and a representative of the Ministry of Natural Resources, the occupier of Ipperwash and Pinery Provincial Parks[,], do hereby order you to leave Ipperwash Provincial Park under the authority of section 3(1)(b) of the Trespass to Property Act, Chapter T.21 as amended. You are not permitted on the property known as Ipperwash Provincial Park. Effective 10:01 PM of today's date I have officially closed Ipperwash Provincial Park pursuant to my authority under Section 32(1) of Ontario Regulations 952, R.R.O. 1990, made under the Provincial Parks Act.

As the two men walked beyond the park gate, they heard a vehicle with a "loud exhaust" drive toward them. It was Bert Manning with two other men in a pickup truck. They asked Mr. Manning who the "spokesperson was for the people ... inside," as they wished to talk to the occupiers and serve a trespass notice. Mr. Manning replied that he would return to the built-up area and discuss the issue with the other occupiers.



Constable George and Mr. Kobayashi waited in the “stillness of the night.” Vehicles returned with First Nations people.

When Clayton and his brother David George arrived at the park gate, Constable George approached their vehicle and tried to engage them in conversation. Clayton George noticed Constable George had papers in his hand. He immediately instructed his brother David to put the car in reverse because he “didn’t want to take that f-ing paper from them.” Clayton George assumed the officer was trying to serve First Nations people with legal documents that challenged their continued occupation of the park. He believed the officers were likely taking the position that First Nations people were trespassing and were attempting to take measures to eject the occupiers from the park. Clayton was also worried the police officers would grab either him or David. David George immediately “pulled backwards away” in his car. The two brothers left the area and drove to the park store.

One of the other Aboriginal men ordered Constable George and Mr. Kobayashi to “get off their land,” and said, “[W]e don’t do business at night.” Bert Manning, who had returned, also refused to accept service of the documents. Mr. Manning said the occupiers had not yet appointed the Elders, but that the First Nations people were prepared to meet with the OPP at noon the following day.

The OPP officer and the MNR Park Superintendent were ordered out of the park beyond the kiosk or main gate, and they complied.

At the roadside, Constable George and Les Kobayashi discussed with Sergeant Korosec the prospect of trying to take control of the park. Because “there wasn’t anybody in the park,” Vince George thought “maybe there was a window of opportunity there to take it back.” Vince George and Les Kobayashi returned to the OPP Forest Detachment to discuss this with Inspector Carson.

When Constable George and MNR Park Superintendent Les Kobayashi arrived at the OPP Detachment, Inspector Carson made it clear he did not want to make a second attempt at service that evening: “I don’t want anyone going in and getting ambushed.” Nor did he want the OPP to try to regain control of the park. Inspector Carson decided to establish checkpoints and “hold tight tonight.”

A/D/S/Sgt. Mark Wright briefed ERT (Teams 1 and 2) in the presence of Inspector Carson. The officers were instructed to set up checkpoints in accordance with the Project Maple plan. All vehicles were to be stopped at each checkpoint. It was Constable Dougan’s understanding that driver and passenger identification were to be requested and recorded on the police log sheets. Then all persons and cars were to be permitted access beyond the checkpoint. Inspector Carson told the officers to refrain from discussing the Ipperwash occupation in public, such as in coffee shops. He did not want members of the community to become unduly anxious about the First Nations protest.

Before midnight, the OPP had requested the St. John Ambulance trailer be transported to Forest. In the early hours of September 5, the St. John Ambulance trailer arrived in Forest. It was stationed in the MNR parking lot on East Parkway Drive.

At a briefing at approximately 1:30 a.m., Constable Parks was asked to accompany the St. John Ambulance vehicle to East Parkway Drive and set up the Tactical Operations Centre (TOC). Constable Parks was introduced to Paul Harding and other personnel of the St. John Ambulance, and vehicles were brought to the TOC site. Officers Dougan, Dellemonache, Japp, Whelan, Gransden, Jacklin, and Parks set up VICTRIX (a portable tower used to improve communications) and the TOC. They remained at this site throughout the night until ERT officers (Teams 3 and 6) relieved them.

### 9.11 Loss of Containment of the Provincial Park

OPP officers had been instructed to withdraw from the provincial park on the night of September 4 to ensure the safety of the police, MNR personnel, and the First Nations occupiers. As Chief Superintendent Coles explained, the purpose of containment is not only to prevent people from entering the occupied area, it is also to keep the situation from becoming volatile. The OPP had lost containment of the park. In Inspector Carson's view, it "made no sense" for the police to try to contain that area, given the geography — "109 acres of property that is literally pine trees" — and the events that had occurred that day and evening.

Prior to the decision to evacuate, there had been an altercation with the First Nations people in the afternoon, flares were later thrown at the OPP, and a police cruiser had been damaged.

In Inspector Carson's conversation with Superintendent Parkin the next morning, it was clear that Tony Parkin was disappointed the OPP had relinquished control of the park and lost containment. Superintendent Parkin said:

I'm only going to ask this question because I'm sure that the Chief is probably going to ask it. How did we, given the fact we have people there when all this happened, how did we lose containment?

Superintendent Parkin made it clear that OPP Chief Superintendent Coles wanted an explanation. After Inspector Carson explained the events of September 4 and that the prime reason for leaving the park was officer safety, Superintendent Parkin commented that it was "unfortunate we couldn't maintain the park."

When Inspector Carson said the OPP was outnumbered in the park, Superintendent Parkin replied, "They're going to say that, well, we knew this



was going to happen.” As Inspector Carson explained to Inspector Linton in a conversation shortly after this call, “We only had eight there, so we just didn’t have the horses to do it ... We got, more or less [for] lack of a better term, run out before somebody got hurt.”

Superintendent Parkin was concerned that more Aboriginal people could enter the park, the number of occupiers would increase, and this could present obstacles to the resolution of the occupation. He was also concerned that the inability to control access to the park could create safety issues for the OPP, as the police would not know the number of people in the park or whether the occupiers had weapons. The OPP Superintendent was further concerned with the perception of residents in the community; namely, that the OPP had “dropped the ball” in losing the park.

Nonetheless, both OPP Commissioner O’Grady and Chief Superintendent Coles testified at the hearings that they supported Inspector Carson’s decision to relinquish control of the park. In Chief Superintendent Coles’ opinion, there were more occupiers than officers in the park, and it was the “right decision ... to leave” Ipperwash Park:

I think they made the right decision to move. No one was hurt on either side, and there was a plan in place to go and seek an injunction. And, as far as I was concerned, that was the path that I wanted in any event because of the ambiguities that surround some of these issues.

Commissioner O’Grady agreed. In circumstances where police officers are in a provincial park with First Nations occupiers, and altercations ensue, and “without any solid authority to resist the occupiers” such as “a court order,” the “correct decision” is for the OPP to withdraw. Commissioner O’Grady explained: “[W]e may cause injury to the people, we may cause injury to our own officers.” He added that the First Nations occupiers may in fact have a legitimate claim:

The occupiers may be basing their claims on what they feel to be a very, very legitimate claim or what, in fact, may be a legitimate claim. I just don’t see how the police could know that and, therefore, the correct decision was to withdraw.

After withdrawing from Ipperwash Park the night of September 4, the OPP did not enter the provincial park. The plan to cohabit was at an end.

Inspector Carson went off duty shortly after 2:00 a.m. Sergeant Steve Reid assumed his responsibilities throughout the night until 7:00 a.m. when Carson returned to the OPP Detachment after catching a few hours of sleep at a nearby Forest hotel.

Mr. Kobayashi remained in the OPP Forest Command Post throughout the night.

## 9.12 Occupiers at the Park on the Night of September 4

Many people, including women, children, and the Elders, congregated around the fire that had been built at the park store. Aboriginal witnesses described the mood on the first night as “happy” and “kind of a celebration.”

In the late evening of September 4 or early morning of September 5, David George and fourteen-year-old Leland White dismantled signs in the park. They engaged in this activity to make it clear that the land was no longer a park, and that this property belonged to First Nations people. As David George said at the hearings:

It wasn't a park no more ...

After they took our land, they put up those signs, and then they lied about giving it back. They never did, so down came the signs.

... the land was basically stolen.

David George criticized the Indian Agents for not protecting the interests of the Aboriginal people. In his words, the “Indian [A]gents came along and messed everything up. They were selling everything off.”

The Aboriginal people did not have firearms at the park, nor did they hear gunshots on the evening of September 4. They also claimed that they did not light firecrackers that evening. Echoing the testimony of many occupiers, Glen Bressette said that other than the flares ignited earlier by Wesley George, no other flares, strobe lights, or firecrackers were lit by the people in the park on the night of Monday, September 4.

Tina George would not have brought her two young daughters to the park if she had thought the situation was potentially dangerous. As she said at the hearings, “it was supposed to be a peaceful occupation.” This was confirmed by Marlin Simon who said that, prior to the occupation, it was decided “it would be a bad idea to bring guns” into the park:

Everybody knew that this was going to be a peaceful thing, that we weren't doing an armed occupation ... If we brought guns in, then it would give the OPP reason just to come in and take us right out and move us out.



Several occupiers, such as Glen Bressette and Roderick George, returned to the barracks in the built-up area to sleep. Others, particularly the younger men, stayed the night by the fire near the park store. Aboriginal people remained at this site into the early hours of September 5 “to help out,” “to be there to hold down the fort,” and to provide “support.” Dudley George, Leland White, J.T. Cousins, David George, and others told stories, drank coffee, and smoked cigarettes near the bonfire.

Kevin Simon described the mood in the park on the first night of the occupation:

It was kind of a celebration — a bit nervous. It seemed kind of odd the way it had taken place, that the police had actually left and ... gave it up to us ... and we were occupying it and we told them it was our land ... [I]t had basically gone so smoothly, I guess. It was pretty tense there for a bit, but ... all in all, it went fairly smoothly and people were glad.

## SEPTEMBER 5, 1995

### 10.1 September 5, 1995

A sunrise ceremony took place in Ipperwash Park on the morning of September 5. First Nations people engaged in prayer, formed a talking circle, and passed a feather around to people who had congregated in the park. The occupiers drank the water that was circulated, and the water was then offered to the Creator.

Stewart George was unaware that the provincial park had been occupied on the evening of September 4. After learning of the occupation, Stewart drove with Robert Isaac in the “OPP WHO” car the following morning from the army camp to the park.

Stewart George discerned a “sense of excitement,” a “positive feeling,” amongst the Aboriginal people at the park, who were relieved that they were now in a position to protect their burial grounds and that the graves would no longer be desecrated. Mr. George said at the hearings, the Aboriginal people were now “able to take care of them and offer them tobacco ... for the spirits to help carry our prayers to the Creator.” Stewart George offered tobacco into the sacred fire that had been built near the park store.

Marlin Simon was at the park on September 5 from about 6:00 a.m. or 7:00 a.m. and remained there for most of the day and night. He described the composition of the people — men and women, the young and the old — who spent the day at the park. Teenagers, young children, and infants, such as Carolyn George’s three-week-old granddaughter, as well as Elders such as Abraham George and Melva George, occupied the park on September 5. First Nations people stopped by and brought food and camping supplies to the occupiers. The Aboriginal people ate, some swam in the lake, and others walked around the park and socialized.

Other Aboriginal witnesses at the Inquiry also described the atmosphere on September 5 as “excited” and “kind of happy.” The occupiers thought “nothing was going to happen” because Ipperwash Park “was closed down for the year and there wasn’t [any] possibility of [an] altercation between campers or anything like that.”

Throughout the day, First Nations people arrived at the park to support the occupation. They included Stoney Point people living at the army camp, residents



of Kettle Point, and people from other reserves and communities such as Oneida, Walpole Island, and Chippewas of the Thames.

Larry French from the Chippewas of the Thames drove several men in his pickup truck from the Oneida Reserve to Ipperwash Park. They included Gabriel Doxtator, Isaac Doxtator (“Buck”), Al George, and Charles George (“Chuck”). Several of them had learned on the news that First Nations people had moved into Ipperwash Park and they travelled there to support the occupiers.

Both Larry French and Charles George were under the impression that the government had returned Ipperwash Provincial Park to the First Nations people and that the people were legally on the land. Charles George intended to go fishing at Stoney Point, and Larry French planned to stay in the park for the day. Mr. French was surprised to see police as they approached Highway 21 and the army camp:

I was shocked to see them. I had no idea that they were there when I came across 21 Highway ... I didn't know why they were there.

The police stopped Mr. French and his passengers at the police “roadblock” between Highway 21 and the main gate to the built-up area on Army Camp Road. Mr. French said there were “wall to wall” police cruisers. The OPP asked the Aboriginal men for their names and the purpose of their visit. Mr. French was asked to exit his pickup truck to enable the police to search his vehicle. When he asked the OPP to explain the questioning and the search, an officer responded that Aboriginal people were in the provincial park. Unhappy with the delay, Isaac Doxtator, Gabriel Doxtator, and the other passengers took their belongings and entered the army camp on foot while Mr. French’s vehicle was inspected. The police told them to stop, but they continued to walk toward the built-up area.

Mr. French could not understand the purpose of the police search. He did not have firearms with him, nor to his knowledge did any of the passengers with whom he was travelling.

As Isaac and Gabriel Doxtator and Al and Charles George entered the army camp on foot, they were surprised at how desolate the barracks appeared. They waited for Larry French to drive into the army camp, and they travelled in his pickup truck to the park. Police cars were stationed all along Army Camp Road toward the lake.

As the men entered Ipperwash Park, they saw about twenty to thirty people — men, women and children. They participated in a smudging ceremony with them. They met up with Glenn George who described the September 4 park occupation and the importance of protecting the burial grounds that had been

neglected and desecrated. Glenn George told the visitors it would be a peaceful demonstration and that there would be no firearms in the park.

In addition to the police surveillance along Army Camp Road, Gabriel Duxtator and his travelling companions noticed a police boat on Lake Huron. The occupiers noticed an increased number of police officers in the vicinity of the park throughout the day.

## 10.2 The OPP Command Post

When A/D/S/Sgt. Wright arrived at the Forest OPP Detachment at 6:00 a.m. on September 5, the mobile command trailer was set up. It had been transported from London during the night. The forty-five-foot trailer was stationed beside the OPP Detachment near the garage area. This mobile trailer became the command post for the next two days of the occupation.

At the front of the command trailer was the communications area, with telephones, logger recording equipment, a desk, and a blackboard. A civilian radio operator and an OPP Sergeant worked in this area. Maps and charts of the Ipperwash area were posted to assist the operators.

A small meeting room with a telephone was at the rear of the trailer, separated by a wall and doorway from the communications area. Inspector Carson spent many hours in this meeting room discussing strategy with his senior officers, communicating with his superiors, and trying to obtain equipment such as armoured vehicles on September 5 and 6.

The Incident Commander decided the unit heads would meet with him on an hourly basis. Members of Inspector Carson's command team included A/D/S/Sgt. Wright, Sergeant Korosec, Sergeant Seltzer, Detective Sergeant Bell, Detective Sergeant Richardson, and Staff Sergeant Dennis.

Officers were briefed in the garage of the OPP Forest Detachment on both September 5 and 6. In the early morning of September 5, a poster was hung on the inside of the garage door to remind the officers of the Project Maple objective: "To contain and negotiate a peaceful resolution." Inspector Carson wanted "every officer" to "have a clear understanding and reminder of what the objective was." If officers were there "for a briefing, for supplies or simply to travel through into the building for other reasons ... every time they came and went" they were reminded of the overriding purpose of Project Maple.

ERT officers arrived from Districts 3 and 6 and were briefed by Inspector Carson at approximately 7:30 a.m. They were given an overview of the events of the park occupation. Inspector Carson instructed his officers to monitor and



control the area. He cautioned them not to get “ambushed.” He discussed the checkpoints and told the officers not to be alone as he was concerned about police safety. A/D/S/Sgt. Wright instructed the ERT officers to wear their grey uniforms. Inspector Carson told the officers to “plan on being here for a few days.”

### **10.3 Chief of Kettle and Stony Point Does Not Support Park Occupation**

Shortly after an 8:15 a.m. telephone call on the morning of September 5, it was evident to Inspector Carson that Chief Tom Bressette did not support the occupation of Ipperwash Park. Chief Bressette confirmed there was no land claim by the Kettle and Stony Point Band on Ipperwash Park. Chief Bressette understood that the province had purchased the park land in the 1930s from individual owners after the Kettle and Stony Point First Nation had surrendered it. Chief Bressette explained that an archaeologist had told the Aboriginal people occupying the park that a burial ground in the park had been desecrated when the park buildings were constructed. Chief Bressette cautioned Inspector Carson, “I think you are going to continue to have problems” with the occupiers “until somebody enforces a law against them.”

Inspector Carson made a clear distinction between the army camp property, which was in the control of the Department of National Defence, and the park, which was owned by the Province of Ontario. He told Chief Bressette that the park occupiers were considered to be trespassing, and that the Ministry of Natural Resources was seeking a court injunction.

Inspector Carson asked Chief Bressette to convene a Council meeting to inform his Band of the OPP’s intentions and to stress that the police did not plan to be “heavy-handed.” The Chief replied that the Council was “tired of these folks,” particularly people from outside the community who were “giving [them] a bad name and a bad reputation.” Les Jewell, he said, “seems to be causing all the trouble down there ... I don’t know why that guy’s allowed to go in and out of Ipperwash” because “he [doesn’t] have any business here.” He added, “[T]reating them with kid gloves isn’t something ... they understand.” Inspector Carson encouraged Chief Bressette to keep “communications open,” and not to hesitate to call the OPP. He said, “[W]e want to work through this thing together the best we can.”

Inspector Carson understood there was “certainly not a very harmonious relationship” between “the occupiers and the Kettle Point Band.” A/D/S/Sgt. Wright, Inspector Carson’s second in command, was also aware that there was “no

support from the Council of Kettle Point for the actions that had taken place at the provincial park” by the Stoney Point group. The position of Chief Bressette and the Band was “important” to A/D/S/Sgt. Wright because it “solidified the information ... that there was no issue with respect to ownership of Ipperwash Provincial Park.”

#### **10.4 Concerns of the Mayor and the Town of Bosanquet**

The Chief Administrative Officer of the Town of Bosanquet, Ken Williams, appeared at the OPP Forest Detachment before 9:00 a.m. on September 5 to meet with Inspector Carson. The purpose of his visit was to convey the Mayor’s concerns about the occupation and to obtain an update on the OPP activities and plans. He wanted information on access to Matheson Drive, and he wanted to know whether a trespass notice had been served on the occupiers. He also inquired about the purpose of the checkpoints.

Inspector Carson explained that preparations were being made for a court injunction for Ipperwash Park. Mr. Williams told Inspector Carson that Bosanquet Town Council would support an injunction for Matheson Drive. Inspector Carson explained that the OPP had established checkpoints to monitor people entering the park area. He assured Mr. Williams that residents and cottagers could access their homes and property, that “lots of officers” were monitoring the situation in the area, and public safety was of prime concern to the OPP.

Inspector Carson was not receptive to Mr. Williams’ suggestion that the municipality declare a “state of emergency.” The Town Administrator was “somewhat animated about the situation” at Ipperwash Park. Inspector Carson tried to assure Mr. Williams that the OPP “had the situation in hand and that it wasn’t necessary” to take such steps. Inspector Carson explained that the OPP Forest Detachment was now a command post and not an operational detachment. The Detachment in Grand Bend was handling the regular police service of the Forest Detachment.

Mr. Williams contacted Inspector Carson again later that morning to find out who was preparing the injunction. The Town wanted to discuss with these lawyers the possibility of an injunction on municipal property on Matheson Drive. Carson explained it was the Ministry of Natural Resources, not the OPP, who was making the court application.

As a result of his contact with Mr. Williams, Inspector Carson asked Sergeant Korosec to have ERT members “go door to door and make the public aware of their presence.” This included cottagers on East Parkway Drive, the Silver Birch



residents on Army Camp Road, and others affected by the checkpoint operations. Inspector Carson “felt it was important” to “make every effort to try to keep the community at large informed and reduce the anxiety level to the degree [they] possibly could.” It was evident to John Carson that Bosanquet’s municipal officials had a “heightened anxiety level.”

In my view, the press release issued by Mayor Fred Thomas and the Town of Bosanquet in the early afternoon of September 5 exacerbated rather than allayed the concerns of Ipperwash area residents. The language in this press release was aggressive, exaggerated, and hysterical. Entitled “Reign of Terror Continues,” the Mayor describes the First Nations occupiers as engaging in “terrorist” and “illegal activities.” He says residents are “terrified” and that there are “rumours that people are buying guns to protect themselves and their families.” Mayor Thomas was also critical of the OPP for not arresting these “Indians”:

### *Reign of Terror Continues*

‘The current reign of terror in our community continues,’ Mayor Fred Thomas advised Council this afternoon, one day after a group of Indians illegally took over Ipperwash Provincial Park.

‘First, they kicked the Army out of the Army Camp and now they kicked the Province out of the Park. What’s next ...?’ Thomas wondered. ‘The Federal Government assured me that all these terrorist activities would be confined within the perimeter of the Army Camp, but this hasn’t happened.’

Members of Council stated: ‘Our residents are terrified. There have been sexual and physical assaults on the beach, shots fired at our workers and buildings burnt to the ground. To date, there have been no arrests and none planned as far as we know. This sends out a message that illegal activities in Canada today are rewarded rather than punished and that is wrong.’

‘I have heard rumours that people are buying guns to protect themselves and their families. Surely this is not a recipe for peace, order and good government,’ the Mayor stated.

The Town is demanding the Provincial and Federal Governments initiate appropriate action to remove the illegal occupiers from the land. ‘The laws of Canada and Ontario much be enforced equally for all Canadians. This reign of terror must stop,’ Thomas said.

In my opinion, this press release aggravated the situation and escalated the anxieties of local residents. The language in this public statement evoked fear and created further divisions between the First Nations people and the cottagers and residents in the Ipperwash area and the Town of Forest.

### 10.5 Request for a Private Line at the Command Post

Superintendent Parkin called Inspector Carson about 9:45 a.m. on the morning of September 5 and learned the details of the previous evening's events when he first spoke with Sergeant Korosec. Stan Korosec described the confrontation and tension in the park. He explained that the OPP had evacuated the area for safety reasons, and that the First Nations occupiers had outnumbered the OPP:

We were down in the park when this thing hit the fan, and it was nose-to-nose for a while. And they outnumbered us at the one point there, so we had no choice but be safe.

Sergeant Korosec discussed the absence of a spokesperson for the occupiers: "The group inside ... are very divided. They have a different leader about every ten minutes." And, he added, "There's a few real jerks," before passing the phone to Inspector Carson.

It was decided in this call on the morning of September 5 that Inspector Carson would update Superintendent Parkin every two hours. When the OPP Superintendent began to ask questions on behalf of himself and Chief Superintendent Coles, Inspector Carson cautioned: "[A]ll this phone stuff is on recorder in the command post here." In a call later that morning, Superintendent Parkin wanted to know which telephone lines were recorded. Inspector Carson explained that his private line at the command post was taped, as were the other lines in the command trailer. However, the telephone lines in the OPP Forest Detachment were not recorded:

PARKIN: We're probably going to need a line at some point in time where we can talk to you.

CARSON: I can go into the detachment and call you and it won't be taped.

PARKIN: Okay.

CARSON: Okay.

PARKIN: We may have to do that off and on.



CARSON: Well, in fact I can just make a point of going into the Detachment when I call yah.

PARKIN: Yeah. Well, you know, it's just that —

CARSON: No, I understand.

PARKIN: — down the road, it may become an issue.

Despite the fact that Superintendent Parkin understood operational matters were to be recorded, he wanted an unrecorded line to discuss the Ipperwash occupation with the Incident Commander. He knew that for reasons of accountability, as well as to ensure accuracy of the record, operational discussions and decisions are taped. The OPP Superintendent acknowledged at the hearings that it was problematic, particularly in terms of perception, that he did not want a record of operational discussions between himself and the Incident Commander at Ipperwash.

It was important to Inspector John Carson that people spoke freely, frankly, and honestly, and that they were “comfortable” sharing information. This is precisely the reason Inspector Carson informed Superintendent Parkin that the telephone line was recorded. Superintendent Parkin suggested they communicate on unrecorded lines for future calls, and Inspector Carson agreed. Carson testified this would provide Chief Superintendent Coles and Superintendent Parkin with “unfettered access to me” for “frank and honest discussion.”

After his conversation with Superintendent Parkin, Inspector Carson instructed a technician to install a private line for him in the command post. Unbeknownst to Inspector Carson, this private designated line recorded his conversations with his superiors throughout the Ipperwash occupation.

As I discuss in the following chapters, it is fundamental, both for reasons of transparency and accountability in police decision making, to record telephone calls to and from the command post. Senior OPP officials should not have made the request for a private line at the command post during the Ipperwash operation. Recording of telephone communications is also important in post-event analysis of an operation by the OPP and other bodies that may review an incident.

## 10.6 OPP Surveillance and Protective Equipment

On September 5, Inspector Carson focused his efforts on ensuring the police could monitor the occupiers from the air by helicopter, from Lake Huron by boat, and in the dark with night vision goggles. The Incident Commander also spent a significant amount of time trying to arrange for the transportation of armoured vehicles to the Ipperwash area.

### *10.6.1 Surveillance from the Air*

The purpose of OPP helicopter surveillance was to monitor the activities of the occupiers and to assess the number of Aboriginal people in the park. A/D/S/Sgt. Wright was charged with the responsibility of arranging for a helicopter to be sent to the Ipperwash area.

A/D/S/Sgt. Wright contacted Inspector Robertson at General Headquarters (in Orillia) on the morning of September 5. Inspector Robertson was responsible for obtaining helicopters and other emergency equipment. In this conversation, A/D/S/Sgt. Wright learned that the OPP Brampton helicopter was out of service for the next two weeks, and the police helicopter in Sault Ste. Marie only had seventeen hours available. Inspector Robertson offered to contact the RCMP regarding the availability of a “chopper.” Another avenue to be pursued was obtaining a helicopter from the Ministry of Natural Resources.

Inspector Robertson asked A/D/S/Sgt. Wright about the situation at Ipperwash in another call later that morning. Wright described the sighting of a rifle in the trunk of an Aboriginal person’s car in the confrontation with the police the previous afternoon, the occupation of Ipperwash Park, the damage to the OPP cruiser, and the police withdrawal from the park. Wright also mentioned the presence of four Emergency Response Teams (ERT) as well as the involvement of the Tactics and Rescue Unit (TRU) at Ipperwash. When Inspector Robertson asked if the situation was analogous to Serpent Mounds, Wright made it clear that there were no similarities: “There’s no doubt that we’ve had this researched, that park belongs to the Province of Ontario.” To Mark Wright, the status of the park was clear and he did not raise the claim by the Aboriginal people of the presence of sacred burial grounds in the park. The Ministry of Natural Resources (MNR) and other provincial Ministries are preparing an injunction, he told Inspector Robertson, because the OPP’s “intention is to go back in and take that park.” In fact, Mark Wright had not had any discussions with Inspector Carson at that time regarding the OPP’s intention to assume control of the park.

The arrival of a helicopter at Ipperwash as soon as possible was of great concern to A/D/S/Sgt. Wright. When Inspector Robertson said 3:00 or 4:00 p.m. was the earliest a RCMP helicopter could arrive, Mark Wright replied: “There’s real potential for one of our guys to get hit” and “we’d like to get in there earlier”:

What happens is, they start rocking and rolling around two, three, four o’clock and it gets busy for us, like really busy for us between four and two o’clock in the morning ’cause they’re out of the sack and they’re out to cause trouble. So what we’d like to do is we’d like to get our people back into the park prior to that, before they start moseying around and ... wandering back into the camp. And we’re really



uncomfortable sending our guys in there without somebody overhead ... The sooner the better is the best I can give you. And if it can't get here till four, then we're fucked till four. But if you can get here sooner, then the better off we are.

A/D/S/Sgt. Wright said he believed the OPP were still contemplating cohabitation in the park with the occupiers on September 5. He thought it was important for officer safety to have helicopter surveillance if the OPP re-entered the park. But the OPP's plan to cohabit had come to an end on the night of September 4 when the police decided to leave the park for reasons of police safety.

A discussion ensued as to whether A/D/S/Sgt. Wright required "extra weaponry" at Ipperwash. During the call, Mark Wright asked ERT Leader Sergeant Korosec, who was in the room with him:

What about when we start bringing the Road Warriors down here? We going to have enough guns and everything for them? Do we need more guns down here?

At the hearings, A/D/S/Sgt. Wright explained that "Road Warriors" was police slang for police officers and was "not meant in any disrespectful way." Although Wright claimed there was "no sinister connotation to the term 'Road Warriors'" when he testified, he appreciated "how there could be that misunderstanding."

Chief Superintendent Coles was adamant that an RCMP helicopter not be used for aerial surveillance at Ipperwash. The reason was the "optics." The Ipperwash occupation was a "local issue," and bringing the RCMP into this situation, "assisting the OPP ... brought a focus to the event that [Chief Coles] didn't think was helpful at this particular time." The OPP made arrangements to use a helicopter from the Ministry of Natural Resources.

Inspector Carson appreciated that while an RCMP helicopter in Ipperwash was "simply a support piece of equipment," it could be perceived that the "level of involvement had been raised now from the Provincial Police to the RCMP." He also understood that with RCMP involvement, the Ipperwash occupation could be perceived by members of the public as having "some relationship to the activities going on at Gustafsen Lake."

At about noon, Inspector Robertson informed Inspector Carson that he would cancel the request for an RCMP chopper, and that 4:00 p.m. was the earliest the MNR helicopter could arrive in Ipperwash from Sudbury. Inspector Carson was anxious for the helicopter to arrive as soon as possible. He explained to Inspector

Robertson: “Before we do anything, I’d like to have an eye ... so we have some idea [of what] the movement is in there before we move people in any particular spot.” Inspector Carson wanted to ensure “we have an eye so that we don’t get ambushed.”

### ***10.6.2 Video Cameras***

Video cameras had been installed at the park kiosk and maintenance building prior to the occupation, but on September 5, these cameras had not yet been turned on. In a conversation with OPP Superintendent Parkin, Inspector Carson said he hoped that the video cameras would be operating before dark.

As Wayne Wawryk, the expert witness on police intelligence who testified at the Inquiry, said, “vision is paramount.” The ability of the police to see events and people is important in public order events. Video cameras are an important means of securing this vision.

From his telephone calls with the Incident Commander, it was evident that Superintendent Parkin considered video surveillance an important means of intelligence, and in his view it was taking too long. Both he and OPP Chief Superintendent Coles were concerned about the poor state of video surveillance in and around the park. As Superintendent Parkin said, the essence of effective video surveillance is that it is anticipatory in nature. The OPP knew the Aboriginal people were planning to occupy the park in early September. Superintendent Parkin was exasperated it was taking the “whole day” for the OPP officers to make the necessary connections with the equipment.

### ***10.6.3 Boat Surveillance***

Inspector Carson wanted an OPP boat to be transported from Grand Bend and stationed on Lake Huron facing Ipperwash beach. Staff Sergeant Bill Dennis was responsible for arranging boat patrol in the Ipperwash area.

The Grand Bend boat arrived by 12:30 p.m. on September 5 and OPP officers in this boat monitored the water and beach area during daylight hours. Officers on the *HH Graham*, a larger boat from Kincardine, were responsible for surveillance throughout the night and were on patrol the evening of September 5.

### ***10.6.4 Light Armoured Vehicles***

The Incident Commander continued his efforts to obtain light armoured vehicles (LAVs) on September 5. Inspector Carson tried to contact Deputy Chief Elgin Austin at the London Police Detachment. He was able to reach Cliff Logan



at GM Diesel, and they discussed the agreement between the London Police and GM Diesel. Inspector Carson suggested that London-trained police officers operate the armoured vehicles at Ipperwash. Mr. Logan agreed to pursue this possibility and to contact Carson later in the day.

Deputy Chief Austin made it clear to Inspector Carson in the early afternoon of September 5 that he was not anxious to send officers and armoured vehicles to Ipperwash. However, the London Deputy Chief would be prepared to assist with armoured vehicles operated by one of his officers if Inspector Carson's team were "under fire" in an emergency situation. Inspector Carson was not satisfied:

That puts us in a bit of a lurch, I guess, to be fairly blunt about it ... [A]fter we're under fire, it puts me in a spot where that's really not much help to me. Because by the time I could mobilize that piece of equipment after finding out we're in a jackpot, it's too late even to ask for it ... It doesn't really do much f[rom] a contingency point of view.

Although Inspector Carson "didn't expect ... to use" armoured vehicles, he "didn't want to have the resource hours and miles away, should that need come to play."

Inspector Carson learned that OPP Officer Rob Shaw was a member of the military and a tank commander. He instructed Sergeant Korosec to have Officer Shaw contact GM Diesel for training the following day in London. Inspector Carson was also informed that an officer who had joined the OPP in the past year had been in the infantry in Petawawa and was trained to operate armoured vehicles.

Tim Coffee, an official at General Motors Diesel Division in London, contacted Inspector Carson to discuss the purpose of the armoured vehicles in Ipperwash. Inspector Carson described the Aboriginal occupation of Ipperwash Park and said there is "some reason to believe there [are] weapons involved." Inspector Carson suggested two OPP officers with military experience travel to London to receive training at GM. Mr. Coffee explained that because no agreement currently existed between the OPP and General Motors, he did not know if "the bureaucracy" could deal with this in an expeditious manner. Mr. Coffee later confirmed that GM was not "in a position to release a vehicle under the current short notice."

At a command team briefing that afternoon, Inspector Carson informed A/D/S/Sgt. Wright, Sergeant Korosec, Les Kobayashi, and others that "talks with GM Diesel [are] off ... [I]f the risk [is] bad enough, we will go to the military" but "risk factors haven't escalated yet."

Pursuing his quest for light armoured vehicles, Inspector Carson spoke to the Department of National Defence (DND) shortly after 3:30 p.m. The military

official to whom he spoke made it clear that if DND provided armoured vehicles, the LAVs were to be represented as Ontario Provincial Police and not National Defence vehicles.

Chief Superintendent Coles was also “adamant” that any armoured vehicles used at the Ipperwash occupation have OPP decals on them and not military designations. Similar to his concerns about using RCMP helicopters, he thought it was essential that there be no perception that the military was assisting the OPP:

I was adamant that if an armoured personnel carrier was going to be used in any way, shape, or form by the Ontario Provincial Police, it would have an Ontario Provincial Police sign on it. I didn’t care if it came from the military. I would paint it and we would repaint it whatever they wished. But it was an Ontario Provincial Police resource vehicle. It was not a tank ...

I can assure you that I was adamant, and John knew that I was adamant ... I did not want to be seen to be assisted by the military. I was keeping that separation, and that was a separation that was very clear in my mind, and I know that I conveyed that to John Carson and Tony [Parkin]. They knew my position.

Inspector Carson assured Chief Superintendent Coles that magnetic overlays of OPP decals could be placed on the armoured vehicles.

Despite Inspector Carson’s significant efforts, he was not successful in obtaining armoured vehicles for the OPP in the Ipperwash occupation on either September 5 or 6.

#### *10.6.5 Nomex Fire-Retardant Suits and Night Vision Glasses*

The OPP also spent time on September 5 trying to obtain Nomex fire-retardant suits for the officers at Ipperwash. Flares had been thrown at police the previous night, and Inspector Carson thought it was advisable to have these outfits as protection in the event that the occupiers threw another “incendiary device” at the police officers.

Inspector Carson also wanted officers patrolling the park perimeter and the vicinity of Outer Drive to wear night vision glasses on September 5 when it became dark to obtain information on the occupiers’ activities. Mayor Thomas and members of the community had expressed concerns about the Aboriginal occupation, and John Carson was “trying to be a little proactive ... to determine exactly what was going on” in and around the park. Inspector Robertson informed



Inspector Carson that five sets of night vision glasses would be sent from London to Forest.

## **10.7 Inspector Carson Informs His Command Team of “Political Heat”**

### ***10.7.1 Local MPP Marcel Beaubien Discusses Occupation with Staff Sergeant Lacroix***

MPP Marcel Beaubien was concerned when he learned of the park occupation. The provincial politician was aware of the rumours circulating prior to September 4 that First Nations people might seek control over Ipperwash Park. Mr. Beaubien had been assured by the OPP that officers were patrolling and monitoring the Ipperwash area, and he had conveyed this to his constituents. Yet Mr. Beaubien learned the police had left the provincial park on the night of September 4 because they were concerned for their safety. Mr. Beaubien had been reassuring his constituents that “people should feel safe because the proper level of policing is there.” But now that the police appeared to be “concerned about their safety,” it was going to be difficult for Mr. Beaubien to offer this rationalization.

It was important to MPP Beaubien that his constituents perceive him as being active and involved in the Ipperwash situation. Staff Sergeant Wade Lacroix was Mr. Beaubien’s first point of contact with the OPP after the September 4 park occupation. Mr. Beaubien had known Staff Sergeant Lacroix for fifteen to twenty years, had sold him house insurance, and described him as a good acquaintance. Upon arriving at his constituency office in Petrolia early on September 5, Marcel Beaubien called Staff Sergeant Lacroix to convey his concerns and to obtain information.

### ***10.7.2 Staff Sergeant Lacroix Informs Inspector Carson of Concerns of Provincial MPP***

Wade Lacroix, an OPP Staff Sergeant trained to lead the Crowd Management Unit (CMU),<sup>1</sup> called Inspector Carson just before 8:30 a.m. to update him on conversations he had had with local MPP Marcel Beaubien.

Staff Sergeant Lacroix made it clear at the beginning of the call that Mr. Beaubien was “quite irate.” Inspector Carson immediately cautioned Lacroix that they were “on recorded [telephone] lines.” Staff Sergeant Lacroix expressed

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<sup>1</sup> The primary purpose of a CMU was to manage crowds in public order events. The CMU consisted of four squads: the contact squad, left cover, right cover, and the arrest squad.

no concern. He told Inspector Carson that Marcel Beaubien was going to call the Premier and say, “[T]his is ridiculous,” and that he wanted “something done.”

Inspector Carson discussed the four ERT teams at Ipperwash and stressed that the OPP had “adequate resources at this time to address all public concerns.” Staff Sergeant Lacroix asked Inspector Carson whether it was a “large formation,” because “for a large formation of ERT, there is supposed to be a Staff Sergeant.” Lacroix was trying to tell the Incident Commander that assembling two ERT teams for a crowd management problem required a CMU Staff Sergeant, and that he had such training. Inspector Carson explained that ERT was being used simply for perimeter security and not for crowd control operations. He assured Staff Sergeant Lacroix: “[N]o one in the community is in any danger of anything in our estimation,” and “we will maintain that level of service as long as it is required.” It was Lacroix’s understanding from this call that Inspector Carson did not intend to deploy the Crowd Management Unit to Ipperwash Park.

Inspector Carson suggested that Staff Sergeant Lacroix continue communicating with Mr. Beaubien because he himself was being inundated with calls from other politicians, such as Rose-Marie Ur, Member of Parliament for the federal riding of Lambton-Kent-Middlesex. Staff Sergeant Lacroix repeated that Mr. Beaubien was “calling the Premier” to say “[W]e’ve got to do something ... it’s now provincial.” At the end of the call, Inspector Carson asked Staff Sergeant Lacroix to keep him apprised of further communications with MPP Beaubien.

Staff Sergeant Lacroix called Mr. Beaubien to update him with information on the Ipperwash occupation. Inscribed in the MPP’s note is the following:

4 emergency response teams — 60 officers  
 2 teams on 24 hrs/day — no danger to individuals  
 ... MNR going for court order.

Staff Sergeant Lacroix provided this information to Mr. Beaubien so that the MPP could inform his constituents that the OPP were taking the situation seriously, that there were additional police resources in the Ipperwash area, and that there was no need to panic. Wade Lacroix was hopeful the provincial politician could help the OPP to lessen the fear in the community.

### ***10.7.3 Inspector Carson Briefs His Command Team on Political Pressure at Queen’s Park***

At the 9:25 a.m. command post meeting, Inspector Carson informed his senior officers that Chief Bressette was supportive of the OPP’s position that the park



belonged to the province and that the Band did not have a land claim to the provincial park.

Inspector Carson also told his officers that the Town of Bosanquet was seeking legal advice regarding an injunction application for Matheson Drive, and that the Ministry of Natural Resources was trying to obtain an injunction for Ipperwash Park. It was Detective Sergeant Richardson's understanding that the police would not enter the park without an injunction.

At the command team briefing, Inspector Carson advised his senior officers that Staff Sergeant Lacroix had been in contact with local MPP Beaubien. He reported that Marcel Beaubien was "updating the Premier on the situation." Officers Mark Wright, Stan Korosec, Brad Seltzer, Trevor Richardson, Don Bell, and Bill Dennis attended this meeting. Inspector Carson explained at the hearings that he relayed this information to his officers because he "wanted them to understand this [wa]s a serious event," as well as the "level of attention" the occupation "[wa]s getting."

## **10.8 Ontario Government Officials Notified of Occupation of Ipperwash Park**

On the evening of September 4 or the morning of September 5, Premier Harris, Cabinet Ministers, and senior political staff became aware of the Aboriginal occupation of Ipperwash Park. Premier Harris learned of the occupation in a call from his Executive Assistant (EA) Deb Hutton, Solicitor General Runciman was informed by his EA Kathryn Hunt, and Attorney General Harnick became aware of the park occupation on the news.

The Minister of Natural Resources was at his family cottage when he learned of the occupation in a telephone call on September 4 from his Deputy Minister Ron Vrancart. Mr. Vrancart told Minister Hodgson that the occupiers of the army camp had assumed control of Ipperwash Park, that the park users had been evacuated, and that the camping season was over. They had minimized security risks to campers and to park staff. Mr. Vrancart explained the history of the army camp, and the frustration of the Aboriginal people at the federal government's reluctance to return their land. The Deputy Minister said the OPP at Ipperwash were in charge of the situation on the ground.

Early on September 5, Peter Sturdy, MNR Zone Manager (Southwestern Ontario), sent a status report by e-mail to a distribution list based on the chronology of events Assistant Park Superintendent Don Matheson had sent to him that morning. It was MNR's position that the occupation was illegal, that MNR had acquired the property from third parties, and that there were no "Native" land

claims to Ipperwash Park. The e-mail stated that a “priority” for MNR was to proceed with seeking a court injunction.

At 9:15 a.m., Dan Elliott (MNR Native Liaison Officer) wrote to Peter Sturdy to advise him that Chief Tom Bressette was in full support of the MNR and the OPP with respect to the park occupation. Dan Elliott also advised him that the Aboriginal people claimed that an ancestral burial ground existed in the park, but that archaeological studies conducted by the Ministry of Culture and Recreation in the early 1970s did not identify any burial grounds. It was only on the morning of September 5 that Peter Sturdy first learned that the claim that a burial ground existed in Ipperwash Park was an important reason for the Aboriginal occupation. Mr. Sturdy directed that research be conducted to determine the validity of the burial ground allegation. He asked Terry Crabe, who worked at Pinery Park but was at the London MNR office at the time, to review files and documents in London and at Pinery to ascertain the merit of the burial ground claim.

On September 5, Premier Harris attended the Canadian Open and was not available for most of the day. As he explained in his testimony, the Ipperwash Park occupation “was not viewed as an issue that was going to cause my involvement, otherwise I wouldn’t have gone off to try and hit the ball as far as Fred Couples. I think that was the day that I played [golf] with him at the Canadian Open.” In terms of his expectations on Tuesday, September 5, Mr. Harris said:

... I was not available throughout the day. So I guess the idea would be that ... by the time I came back Tuesday night, that it was all over and the occupiers left and they made their point, they — taking a long time for the federal government to give them their camp back, and we would probably support them in that.

## **10.9 The September 5 Interministerial Committee Meeting**

When Julie Jai, Chair of the Ontario Government Interministerial Committee (IMC), returned from vacation after Labour Day on September 5, she learned First Nations people had occupied Ipperwash Park. Ms. Jai convened an IMC meeting for 11:00 a.m. that morning to address this issue.

Attendees of the meeting consisted of political staff and bureaucrats from various Ministries, such as the Attorney General, Natural Resources, the Solicitor General, as well as the Premier’s Office. It was a much larger group than the August 2 IMC meeting, held after First Nations people took control of the army barracks at Camp Ipperwash. As Ms. Jai explained, the government on September 5 was dealing with a “real, not just an anticipated emergency.”



The September 5 meeting was held at the ONAS Boardroom on Bay Street in Toronto. Some of the political staff and civil servants at the meeting included:

Elizabeth Christie (Attorney General Civil — Crown Law Office)  
 Ron Fox ([Ministry of the] Solicitor General)  
 Eileen Hipfner (ONAS)  
 Dave Carson (ONAS)  
 Deb Hutton (EA to Premier Harris)  
 Dave Moran (EA to Attorney General Harnick)  
 Jeff Bangs (EA to Minister of Natural Resources Hodgson)  
 Kathryn Hunt (EA to Solicitor General Runciman)  
 Barry Jones (Legal Director at the Ministry of Natural Resources)  
 Shelley Spiegel (Cabinet Office)  
 Peter Allen (EA to Deputy Minister of Natural Resources Vrancart)  
 Anna Prodanou (ONAS, representing her Director Janina Korol)

Participating by conference call were Peter Sturdy, Ron Baldwin, and Dan Elliott from the Ministry of Natural Resources.

At the outset of the meeting, people identified themselves, their position, and the Ministry with which they were affiliated. Julie Jai, Acting Legal Director of ONAS, observed that several people at the September 5 meeting had “very little experience dealing with Aboriginal issues or Aboriginal emergencies.” Political staff such as Dave Moran acknowledged at the hearings that he was one of the people who had limited knowledge of First Nations issues. There were also people like Deb Hutton, Executive Assistant to Premier Harris, who were not aware of the mandate, guidelines, or powers of the Committee. This was the first time Deb Hutton had attended an Interministerial Committee meeting on Aboriginal Emergencies.

Participants at the meeting, such as Julie Jai, Eileen Hipfner, Anna Prodanou, and Elizabeth Christie, made detailed contemporaneous handwritten notes. Ms. Jai, described by people who worked with her as meticulous, had a reputation for taking accurate, copious transcriptions of comments at meetings. Anna Prodanou, a former journalist, said she also had a “compulsive habit of taking notes” that were fairly detailed. Julie Jai forwarded typed minutes of the meeting to attendees later that day.

The stated purpose of the IMC meeting was “to gather information and develop recommendations regarding the Stoney Point Group’s occupation of Ipperwash Provincial Park.” Political staff such as Kathryn Hunt considered the IMC meeting to be an information-sharing session. She attended the meeting

“to observe and bring information back” to her Minister, Solicitor General Bob Runciman. Jeff Bangs, EA to Minister Hodgson, also described what he perceived to be the role of an Executive Assistant to a Minister at an IMC meeting. Although his primary function was to gather information, he would convey his Minister’s views to members of the Committee on various issues that were discussed. It was the understanding of civil servants such as Julie Jai that if an EA expressed an opinion, it reflected the view of his or her Minister.

ONAS staff began the meeting with background information. The park occupiers were described as a dissident group from the Kettle and Stony Point First Nation, not recognized as an independent band under the *Indian Act*. Members were reminded that at the time of the August 2 IMC meeting, there had been indications that “Stoney Pointers” might occupy Ipperwash Provincial Park.

ONAS lawyer Eileen Hipfner provided a synopsis of the August 18, 1995, decision of Killeen J. in *Chippewas of Kettle and Stony Point v. Attorney General of Canada*. The case involved an assertion by the Kettle and Stony Point Band that the 1927 surrender of the land was not valid. The Ontario Court General Division found the 1927 surrender, involving land originally part of the Kettle Point Reserve, to be valid. It is important to understand that this decision had no application to the land at Ipperwash Provincial Park, that is, to the 1928 surrender of land that had been part of the Stoney Point Reserve. In fact, the minutes of the September 5 IMC meeting explicitly state that Killeen J.’s decision “did not deal with the park.”

Despite this statement, members of the IMC thought that the August 18, 1995 decision “increased the confidence that we had valid title to the park.” As Ms. Hipfner explained at the hearings, that assumption by government officials was incorrect.

Ron Fox, the OPP officer seconded to the Solicitor General’s Office (as Special Advisor, First Nations), provided the Interministerial Committee with an update of the situation at Ipperwash Park. In his view, his role was to represent the office of the Deputy Solicitor General and to “provide information from the field” — “what has occurred, what perhaps is occurring, and also what might occur for the purposes of the group coming together to make a determination.” Political staff such as MNR Executive Assistant Jeff Bangs and Ministry of the Attorney General (MAG) Executive Assistant Dave Moran understood that Mr. Fox was a liaison between the OPP and the Ministry of the Solicitor General.

IMC members were told that at about 7:30 p.m. on Labour Day (September 4), a group of “Stoney Pointers” consisting of thirty to forty men, women, and children had occupied the park. They were believed to be the same people who had assumed control of the army camp five weeks earlier at the end of July. The OPP,



Fox reported, had established a perimeter around the park. OPP and MNR had informed First Nations people they were trespassing, but the occupiers refused to leave the park. A command post had been set up by the OPP in Forest, and the situation was stable. It was evident to participants at the meeting that Mr. Fox did not consider the situation an urgent or pressing matter.

MNR followed with an update by telephone. As explained by Ms. Jai, it was typical to have people on the ground provide current information to the IMC in an emergency situation such as a protest or occupation. Peter Sturdy, MNR Zone Manager in Southwestern Ontario (which encompassed the Ipperwash area), considered that his role at the meeting was to provide “a sense of the events that were occurring at the field level.” His primary source of information was his MNR staff at the command post.

MNR officials took the position that the province held valid title to Ipperwash Park. The land had been surrendered by the Aboriginal people to the federal government in 1928, which was in turn sold to private citizens. The Ontario government subsequently purchased the property from the private landowners.

Peter Sturdy reported that First Nations people had instructed MNR staff to leave the park after the occupation. MNR had tried to serve a trespass notice pursuant to the *Trespass to Property Act*, but the occupiers had refused to accept service. There was no identified spokesperson or leader of the group. A decision had been made to officially close the park pursuant to the *Provincial Parks Act*. Although the park in the past was closed on Labour Day for overnight camping, use of the park and beach was permitted during the day. However, because of the occupation, the park had been completely closed to the public for all purposes.

There had been no communication with members of the Stoney Point group. Consequently, the demands of the First Nations occupiers were not known.

MNR also indicated that some occupiers had entered the maintenance building and inscribed the words “Stoney Point #43.” This was considered significant as “#43” was the number designated by the Department of Indian Affairs to the Stoney Point Reserve; in other words, the occupiers seemed to be asserting a claim to ownership of the park lands — this property was part of their reserve.

It was reported that there had been no violence, nor were there any indications that the occupiers were armed. However, MNR staff said Aboriginals had cut down trees, blockaded Matheson Drive, and may have stolen an OPP vehicle.

Ron Fox knew MNR staff had been present at OPP briefings. However, he was “surprised” that Mr. Sturdy or Mr. Baldwin was communicating what he considered to be operational information. Mr. Fox told the Committee it was

highly unlikely an OPP vehicle had been stolen, but that he would confirm this information. This was merely rumour, in Mr. Fox's view, and as he aptly said at the hearings, "[i]nformation that is received and not well sourced, in terms of validity, can be very problematic."

MNR officials confirmed that in the past, the province had permitted First Nations people to use Ipperwash Park for ceremonial purposes. The Supreme Court of Canada decision, *R. v. Sioui*, was discussed in the context of allowing Aboriginal people to perform traditional ceremonies in the provincial park if they were not incompatible with the use of the park.

The possible existence of a burial site in the park was raised as an explanation for the occupation by First Nations people. An Aboriginal occupier had reportedly said, "[T]he park's our[s] now, they'll be paying us now" — the rationale being the burial site.

Most of the political staff in the room were unaware of the significance of burial grounds to First Nations people. As Dave Moran, EA to Attorney General Harnick, said:

When the issue of the burial ground came up, I'm fairly certain that this is the first time that any of the political staff in the room, myself included, had been briefed on issues of burial grounds and the significance. And it was something that we discussed at the meeting in terms of the significance in the role because one of the questions that we had was valid title to the park. And when we discussed whether a burial ground was sufficient reason for the validity of the land claim, we were told, No, that that was not.

An MNR official commented that there might be new archaeological evidence regarding a burial ground that ought to be evaluated. It was also suggested that the government's obligations under the *Cemeteries Act* be examined. ONAS lawyer Dave Carson was subsequently charged with this responsibility. However, the IMC did not recommend that efforts be made to contact First Nations people in the Ipperwash area to determine if there was oral history to support the claim of a burial ground. Ron Fox testified that this was a mistake. In his view, the issue of colour of right should have been seriously considered by the IMC.

The Committee considered possible approaches of the government to the occupation. A civil injunction was suggested as a legal remedy to move the occupiers out of the provincial park. MPP Marcel Beaubien, the Committee learned, was urging the government to seek an injunction. MAG lawyer Elizabeth



Christie was surprised to hear this information: “I hadn’t ever seen that before ... I had never seen the local MPP becoming actively involved in that sort of thing.” Also, the Town of Bosanquet had indicated it was independently seeking an injunction for Matheson Drive, the road blocked by the occupiers.

Peter Allen, Executive Assistant to MNR Deputy Minister Vrancart, commented that First Nations people were simply occupying an empty park. He cautioned that “precipitous” action should not be taken. Nevertheless, his Deputy Minister thought it would be wise to prepare an injunction application in the event that it became necessary to seek this remedy. Jeff Bangs, Executive Assistant to Minister Hodgson, agreed: “[W]e can afford to wait.” Mr. Bangs was concerned that if an injunction was obtained from the Court, they would “be expected to move in,” which would “escalate” the situation.

Mr. Bangs had discussed this very issue with Minister Hodgson before the IMC meeting. There was concern that an injunction could lead to a confrontation with the occupiers. Mr. Bangs urged restraint and caution in dealing with this situation.

It was reiterated that public safety was not an issue at this time. It was suggested that the demands of the First Nations people and the reasons for the occupation be determined before an injunction was sought from the courts.

A concern was raised that Mohawk Warriors might join the occupiers at Ipperwash. As Ms. Christie explained, “the backdrop” is that “the Gustafsen Lake standoff is going on at the same time in British Columbia and the Mohawk Warriors had been sort of active in various areas.”

At this point in the meeting, there was a shift to a consideration of the political climate when the question was asked, “What is the tolerance level of the government if there is an escalation?”

Serpent Mounds was raised as an example of a recent occupation that had ended peacefully. However, the Ipperwash situation was perceived to be different because, in contrast to Serpent Mounds, the government was confident it had full legal title to all of the Ipperwash parkland. It was at this point that Deb Hutton, Executive Assistant to Premier Harris, interjected and questioned why the IMC had not met to discuss Serpent Mounds.

Speaking on behalf of the Premier, Ms. Hutton forcefully said, “[The] Premier is hawkish on this issue” and feels “we’re being tested.” It “will set the tone” for how the government will deal with these issues over the next four years. Most people in the room interpreted “hawkish” to mean aggressive. It was evident to members of the IMC that the government “wanted a proactive approach” in addressing the occupation at Ipperwash Park.

The atmosphere of the IMC meeting changed. ONAS lawyer Eileen Hipfner described the tension in the ONAS Boardroom:

*My recollection is that after Ms. Hutton made the statement about the Premier being hawkish on this issue, that marked a change in the tone ... of what had been to that point a fairly unremarkable meeting. And that after that, the focus ... became Ms. Hutton and sort of addressing Ms. Hutton's concerns. She has a very forceful way of presenting her ideas ... if I was anywhere but here, I might say that it could cut the tension with a knife. It was, to me, palpable ... there was a lot of tension in the room after that, and a lot of focus on Ms. Hutton and her comments and her needs ... [P]eople seemed to be directing their comments to her, seemed to be, as I said, responding to the things that she had said or was saying. (emphasis added)*

Ms. Hutton's demeanour was so forceful that Ms. Hunt thought she was the Chair of the IMC meeting: "My sense was that Deb Hutton was chairing the meeting," and she was "asking questions" and "she seemed to be the lead speaker at the meeting."

People in the room believed Ms. Hutton was speaking on behalf of Premier Harris. As Mr. Bangs, EA to Minister Hodgson, said: "When the Premier's [E]xecutive [A]ssistant attended a meeting, and not just these particular meetings ... our expectation as political staff was that when they spoke, they were speaking with the authority of the Premier ... unless they stated otherwise."

Other IMC members, such as Ron Fox, also thought Ms. Hutton "spoke as if she were the voice of the Premier. ... [T]he way she spoke, I can only assume that she had communication with the Premier because she was speaking in his voice, if you will." Ms. Hutton herself understood that when she spoke, members of the Committee considered her words significant, given her position in the Premier's Office. Ms. Hutton said she only committed the Premier to positions she had vetted with him, unless she had a "very high expectation that what [she] was saying was consistent with his views."

Jeff Bangs raised the application of the Statement of Political Relationship (SPR) developed by the previous government in 1992 which, in his view, was "still in existence and on the books." He thought that the "SPR [wa]s the bigger umbrella issue":

Even though it was signed by the previous government with First Nations, it was still an existing live document and I thought we needed to be mindful of it and perhaps follow some of the elements of it.

This framework delineated the manner in which the province would address Aboriginal issues. It recognized the right of First Nations people to self-government and discussed Aboriginal and Treaty rights under the Constitution. As the SPR



states, it is “intended as a resource for ministries to use to enable them to operate on a more consistent and informed basis as they develop Ontario’s relationship with First Nations.” As far as Ms. Hutton was concerned, the Statement of Political Relationship provided no assistance to the Harris Government in its approach to the Ipperwash Park occupation. Mr. Bangs’ point was not pursued. It became evident to Mr. Bangs that he and Ms. Hutton were at different ends of the spectrum of the “go-fast/go-slow” debate.

It was also mentioned that Chief Tom Bressette of the Kettle and Stony Point Band did not support the park occupation and could become frustrated if the government allowed the occupation to continue. The Chief, it was said, supported the OPP and MNR, and he did not want the government to act in such a way that would give legitimacy to the splinter group.

Ron Baldwin noted that although there were no public safety issues in the park, the government needed to be mindful of the residents in the adjacent cottages and homes.

Ron Fox confirmed that it was difficult for the police to secure the perimeter of the park because of the forest and beach access.

As the meeting progressed, tension between some of the political and civil servant staff escalated. As Anna Prodanou observed:

... there seemed to be more and more tension between the political staff and the government employees who were providing various forms of advice, efforts at trying to determine messaging, and ways in which the emergency could be addressed ... [T]here was an impatience on the part of the political staff, considerable impatience, to deal with this effectively and quickly.

Ms. Hutton acknowledged she was “slightly frustrated” during the latter half of the meeting: “I wasn’t getting the sense that we were sort of thinking outside the box or being creative in making sure that we had all potential options on the table for the government to then assess and analyze and make a decision about.”

Ms. Prodanou recalls that a “political member” of the IMC relied on a “Hell’s Angels” metaphor: “I remember ... in one instance someone use a metaphor to say, well ... if a group of Hell’s Angels landed on your front lawn and set up camp there, would you not be able to call the police and have them removed?”

Ron Fox and others also discerned a “dividing line” emerging on the approach to be recommended to the government. Several IMC participants subscribed to a patient, measured, careful and slow response to the park occupation, while others such as Ms. Hutton had a “sense of urgency” and thought they “should be doing more and doing it faster.” Julie Jai, Chair of the IMC meeting, described Deb

Hutton as “one of the people who was extremely frustrated at the kind of relaxed, slow approach that we were proceeding with at the meeting.” This was apparent from the “comments that she made at the meeting as well as even her body language and kind of the forceful way in which she made the statements.”

MAG lawyer Elizabeth Christie was asked to describe some of the legal options available to the government. She discussed: (1) *Criminal Code* provisions — mischief charges; (2) trespass offences under the *Trespass to Property Act*, the *Provincial Parks Act*, and the *Public Lands Act*; and (3) civil injunctions — ordinary and emergency. In her view, the *Criminal Code* provisions were not suitable for the complex situation of this Aboriginal occupation. It was also Ms. Christie’s view that the government might not be successful in obtaining an ex parte injunction from the courts. She estimated that if the province sought an ordinary injunction, the application would be heard in approximately two weeks.

Deb Hutton was not satisfied with these options. In her view, two main positions were put forward at the meeting — “sit back and wait, do nothing, see what happens,” and an injunction application that could be up to a two-week process. Neither of these options were satisfactory to Ms. Hutton, who thought it was important that the occupation quickly “come to an end.”

Deb Hutton made it clear that the government could not wait two weeks. As the IMC Chair inscribed in her notes: “Deb — wants an emergency injunction — doesn’t want to wait 2 weeks — attempts should be made to remove people — leave it up to OPP as to how to do this.”

Julie Jai, Eileen Hipfner, and other civil servants were not accustomed to the communication style of political staff such as Deb Hutton at the IMC meeting. Ms. Jai said:

I was unused to political staff taking such a dominant role at these meetings. Like in the past, political staff had come really to bring information back to their Ministers or to engage in sort of a dialogue rather than to give explicit direction as directly as she appeared to do.

Eileen Hipfner similarly agreed that Ms. Hutton did not limit her participation at the meeting to acquiring information to communicate to the Premier, but rather assertively put forth a perspective that she claimed reflected the views of the Premier. Ms. Hutton tried to convince IMC members that this was an urgent situation that required quick action. Ms. Hipfner described Ms. Hutton’s behaviour as “imperious.”

Ms. Hutton’s comments were no surprise to political staff who had previously worked for the Premier. As Mr. Moran said, “Mr. Harris wanted to deal with this in a strong manner,” and “for people that had worked for him in the



past ... it wasn't a surprise." Although he thought "The Premier's hawkish on this issue" was "a poor choice of words," Dave Moran "was not surprised by the comment." Mr. Harris was known as a "no nonsense kind of guy" who "usually felt a great deal of passion ... one way or the other" for most of the issues he addressed while in government.

The Committee decided that further legal work needed to be done to evaluate the risks, logistics, and timing of the various legal options put forth by Elizabeth Christie.

The IMC then developed a communications plan to be shown to politicians and senior bureaucrats for their approval. It was decided that the possible existence of a burial site in Ipperwash Park would not be mentioned in a public communications message. Ron Fox disagreed with the decision not to include the assertion of burial grounds in press releases or other communication messages the government would issue.

In a forceful manner, Deb Hutton said, "Strategic imperative — this government treats non-Aboriginal people and Aboriginal people the same." Ron Fox disagreed with this position and tried to explain to the Premier's Executive Assistant that this view was not accurate and it was simplistic.

MAG lawyer Elizabeth Christie was one of many others who was "startled" and unnerved by Ms. Hutton's comments. Ms. Hutton was perceived as the spokesperson for Premier Harris, and she spoke with his authority. Ms. Christie said that it

*... demonstrated to me an unnerving ignorance of constitutional law and the laws of Canada because, as a lawyer, my understanding ... was that based on the Constitution and the Charter and jurisprudence, that we don't necessarily treat Aboriginal and non-Aboriginal people the same. There are good reasons and laws that require that we do treat them differently in certain circumstances ...*

Part of my surprise at this comment was that I didn't expect the representative of the Premier to be demonstrating ... ignorance of constitutional law. So that certainly added to my surprise ... I wouldn't have thought that she ought to have had what I interpreted as a level of ignorance ... [N]o one had said anything that would make me believe at that moment that it was a matter of opposition of Aboriginal rights ... [A]s a lawyer and a public servant and a legal representative of the Crown, my particular concern ... was at the time sort of upholding the law and endeavouring in the way that I was able to ensure that the rule of law was upheld and that the constitution was upheld. (emphasis added)

Deb Hutton's comments also surprised ONAS lawyer Eileen Hipfner. This was her "first direct exposure to anybody representing that newly elected government ... We were just becoming acquainted with our new political masters. And they had made a distinct impression on me that day and one that did not leave me feeling very comfortable."

Deb Hutton's forceful tone and comments clearly indicated that Ms. Hutton was agitated with the manner in which the issues surrounding Ipperwash Park were discussed at the IMC meeting.

Ms. Hutton explained: "[T]his was the first time that a group of people, regardless of whom they were or where they were, were obviously attempting to make a point, get the government's attention, perhaps encourage the government to respond in a particular way. So it was a general concern ... that we didn't want to send the signal that it was okay." The Premier, she said, did not consider this an Aboriginal issue. She said at the hearings, "[W]e did need to make clear that we didn't condone this behaviour"; he considered it "illegal," and he wanted a response as soon as possible.

It was evident to Shelley Spiegel from Deb Hutton's comments that the new Conservative Government had a different approach than the predecessor NDP Government to Aboriginal issues. The Harris Government clearly considered the occupation illegal and sought a quick resolution to this matter. Ms. Hutton "conveyed an urgency that it should be done quickly, that they didn't want a long process." Ms. Spiegel realized

[t]here was going to be a change with the new government in their approach to dealing with these issues. And that there was not going to be a negotiation around the removal of blockade or occupation, whatever the incident was. And that it was going to be viewed as an illegal trespass on Crown land, on public property ...

I understood that it would be a change in direction. It wouldn't have been moving ... on the continuum that we had seen in the last ten years to recognizing Aboriginal rights and resolving any of the outstanding issues. That it was going to be a shift. That there had been a steady progression and progress being made in ten years and that that was going to change.

It was also evident to Shelley Spiegel that Ms. Hutton was speaking on behalf of the Premier: "It was just clear that she had the voice of the Premier, the ear of the Premier, constant contact with the Premier, and knew what his view was on having to resolve the issue."



Ron Fox openly disagreed with the opinions expressed by Ms. Hutton at the meeting. By contrast to the Premier's EA, the liaison officer advocated a slow, measured, cautious approach, and he encouraged ongoing communication with the First Nations occupiers in order to defuse the situation.

Mr. Moran tried to explain at the hearings why the Conservative Government was focused on quickly ending the occupation. The new government, sworn in about ten weeks earlier, wanted to focus their efforts on their 1995 campaign promises and did not want to be diverted by such issues as a First Nations park occupation:

... The general message was that the Premier didn't want – the general idea was that we were a new government that came in with a very ambitious agenda and we wanted to focus our efforts on implementing the campaign promises that we had made to the people of Ontario. And so that was our primary focus. And so in terms of the issue that was going on there, we were very conscious of trying to contain it and ... we didn't want that situation to derail the larger agenda and, as I said, the larger agenda was jobs and the economy.

The government also wanted to convey to the public the message that it was addressing the occupation in a quick, strong manner:

... The government wanted to act quickly in terms of trying to contain it to the local area and at the same time be seen ... to be dealing with this in a strong manner and that we didn't want to give anyone the impression that if they took over a provincial park, then the province would just readily negotiate away the park ...

Mr. Moran acknowledged that he did not understand the complexity of the issues and, like several other political staff, viewed it simply as a "law-enforcement issue." He stated, "I don't think ... I understood at the time that there were more issues involved" — such as the colour of right or that Ipperwash Park had originally been Treaty reserve land. He agreed that it would have been useful for IMC members, such as himself, to have such information in order to understand the motives of the Aboriginal people occupying the land at the park.

At the conclusion of the IMC meeting, the Minister of Natural Resources, Chris Hodgson, was designated as the spokesperson for the short term. This direction came from Deb Hutton of the Premier's Office. MNR was instructed to inform the public that (1) the Province has valid title to Ipperwash Park; (2) the occupiers have been told they are trespassing and have been asked to leave; and (3) the Province will take steps to remove the occupiers as soon as possible.

Jeff Bangs, Executive Assistant to Mr. Hodgson, did not think it was appropriate for the Minister of Natural Resources to be the lead spokesperson on the park occupation. MNR had been repeatedly told over the summer that the OPP was the lead in the Ipperwash matter. In Mr. Bangs' view, "[i]t just happened to be taking place in a [p]rovincial [p]ark, but it had much broader consequences, potentially."

"Next Steps" specified at the meeting included an analysis to be undertaken by lawyers at MAG, ONAS, and MNR of the legal options to be presented to the IMC meeting the following day. Also each Ministry representative at the meeting was to brief his or her respective Minister on matters discussed at the meeting.

The OPP, according to the IMC minutes, would have "the discretion as to how to proceed with removing the Stoney Pointers from the Park." The IMC meeting was scheduled for the next morning at 9:30 a.m.

### **10.10 Why Was a Facilitator/Negotiator Not Appointed by the IMC?**

The Guidelines for Responding to Aboriginal Emergencies (Blockades) explicitly state that "[a]ll efforts will be made to ensure a timely lifting of any blockades through a negotiated resolution." As previously mentioned, the IMC had discretionary powers to appoint a facilitator/negotiator, make decisions on third-party intervention, agree to a negotiating agenda with all parties, and to involve the Indian Commission of Ontario.

Despite the fact that several IMC members were aware the Committee had the power to appoint a facilitator or negotiator, this was not discussed at the meeting. Several individuals, such as Ron Fox and Julie Jai, clearly understood the virtues of attempting to address the occupation with a third party. This was consistent with a "go-slow," measured approach to the occupation advocated by several IMC members, and it would improve the opportunities for a peaceful or non-violent resolution of the situation. However, it was not consistent with the law and order approach of political staff, such as Ms. Hutton.

Julie Jai and Elizabeth Christie believed the two main reasons why the IMC was unable to turn its attention to the prospect of appointing a facilitator/negotiator were: (1) Deb Hutton's comments that the Premier wanted immediate action and desired the occupiers out of the park in a day or two; and (2) the Premier did not consider the park occupation an Aboriginal issue.

MAG lawyer Elizabeth Christie "personally" felt that the "right approach" in this situation was for the Committee to appoint a facilitator. The general approach of the previous government to blockades or occupations was not to negotiate the



underlying issue or grievance, but rather to negotiate the removal of the blockade or occupation and develop a process for addressing the underlying grievance.

It would also take time, said Ms. Jai, for the IMC to find a facilitator and for that person to travel to the Ipperwash area. She recommended that the government compile a list of possible facilitators/negotiators to expedite the availability of such persons in the event of an Aboriginal emergency:

... [O]ne of the things that would be useful would be for government to have a list of people, like a roster of people who could be available in these types of situations who were trained facilitator/negotiators and who were well-regarded by the Aboriginal community ... That's something that we did not have in place at the time that I think would be useful.

In my view, the compilation by ONAS of a list of available negotiators and facilitators would assist the government in its attempts to quickly and peacefully resolve Aboriginal issues that emerge.

### **10.11 Inadequate Understanding by Political Staff of Colour of Right**

The IMC, in my view, did not devote adequate time to a discussion of colour of right of the Aboriginal people, that is, the claim that the park was their land. This concept should have been fully explained to give all Committee members an understanding of the possible justification First Nations people believed they had to be in the park. Mr. Moran, EA to the Attorney General, said, “[I]t was our understanding leaving the meeting that there were no Native issues really surrounding the park,” He added, “[T]he focus of the discussion was all on law enforcement ... or ownership ... matters”:

And so the impression that we were given was that this was strictly a law enforcement issue and that other than the fact that the people who had taken over the park were Natives, that's just basically where the Native issues ended ... It was strictly a law enforcement issue.

Ministry representatives at the IMC meeting were asked if they had information related to a possible burial site in the park. At this time, both the federal and provincial governments had documents that indicated First Nations people, as early as 1937, had asserted that burial grounds existed in the park and that

they required protection. Yet political staff and civil servants at the meeting were not aware of this information before the tragic events of September 6. They became aware of these documents a week after the death of Dudley George. Clearly it was important for the IMC to have this information in deliberating their recommendations to the government on how to handle the occupation. It would have also been advisable for federal representatives to have been present in early September 1995. Jeff Bangs, EA to Natural Resources Minister Hodgson, agreed that had the IMC members known of this information, this was a further argument to “go slow” in dealing with the occupiers at Ipperwash Park.

### **10.12 Briefing of the Minister of Natural Resources Post-IMC Meeting and MNR Press Conference**

Minister of Natural Resources Chris Hodgson arrived at his office in Toronto after 2:00 p.m. and met with his Deputy Minister Vrancart, his Executive Assistant Jeff Bangs, and Peter Allen, Executive Assistant to Deputy Minister Vrancart. They briefed the Minister on the IMC meeting. They told him that a decision had been made at the IMC meeting that Minister Hodgson would be the government spokesperson on the Ipperwash Park occupation. Minister Hodgson did not react well:

I said that it hadn't been our issue all of August, that ONAS was in charge of First Nation relations, the OPP were monitoring the situation on the ground and were in charge there, that I didn't feel that it was my responsibility to be the government spokesperson on issues that we had no control over or say on ... particularly around injunctions. I didn't feel ... I still don't feel that I know enough about injunctions to go out and convey to the public what the ramifications are around that.

Minister Hodgson did not consider the Ipperwash Park occupation an MNR issue. Both Mr. Vrancart and Mr. Bangs agreed that it was inappropriate for the Minister of Natural Resources to be lead spokesperson.

Mr. Vrancart continued to advise Minister Hodgson on September 5 to stay out of the spotlight on the Ipperwash Park occupation. MNR's main concern was the preservation of the park's assets through the winter, and that could wait a few months, at least until November. The Minister of Natural Resources and his senior staff believed that an illegal occupation was taking place and that the OPP were in charge of the situation on the ground; it was a complicated file involving First Nations issues, and ONAS, as the head of the Interministerial Committee,



was “in charge.” They did not think there was an immediate threat to either the park or to public safety. It was their understanding that the Premier wanted the situation dealt with quickly.

Minister Hodgson was given a briefing note to review before he spoke with the press. In consultation with ONAS, the Attorney General’s office, and the Ministry of the Solicitor General, MNR staff crafted a suggested message note for the MNR Minister. It is noteworthy that the briefing note did not refer to the possibility of a burial ground in Ipperwash Park as an explanation for the occupation.

The press appeared at Minister Hodgson’s office in Whitney Block for a scrum. Minister Hodgson delivered the key messages, approved by the IMC, at this press conference. He emphasized that “a splinter group” from Kettle and Stony Point First Nation was occupying Ipperwash Park, that the province acquired the land legally and was not aware of any First Nation claim to the land, and that the occupiers in the park were illegally trespassing. In response to questions, Minister Hodgson said that an injunction might be sought, that the government intended to act quickly, that public safety was at the forefront of the government’s decisions, that campers had been vacated from the park, and that the Ipperwash Park occupation was related to the occupation of the army camp.

Both Solicitor General Runciman and Attorney General Harnick were also briefed by their staff after the IMC meeting. Kathryn Hunt, Executive Assistant to Solicitor General Runciman, who had said little at the IMC meeting, considered the Ipperwash occupation simply a watching brief for her Ministry. MNR was the owner of the park, MAG would be responsible for preparing an injunction, and she was cognizant of the division between the Ministry of the Solicitor General and the operational functions of the police. As far as Ms. Hunt was concerned, there was very little for either her or Mr. Runciman to do on the Ipperwash Park file.

### **10.13 MPP Beaubien Informs Bill King of the Premier’s Office of His Plans to Issue a Press Release**

At about 1:00 p.m., MPP Beaubien faxed a proposed press release to Bill King of the Premier’s Office. Bill King was an Executive Assistant to the Premier responsible for Conservative caucus MPP liaison, a position created by Premier Harris after the June 1995 election. This position was a vehicle by which MPPs could communicate constituency or other concerns to the Premier’s Office. In turn, the Premier’s Office would share information with Conservative MPPs about issues pertaining to the Premier and the Ontario government.

Marcel Beaubien faxed the press release to Bill King because the MPP was frustrated that he had been communicating information to Queen’s Park but had

not received a response. The press release was his attempt to attract the attention of the Premier or the Premier's Office:

... [B]asically I'm giving him a heads-up that here's a press release that's going to go out ... [W]hen you give somewhat of an ... "ultimatum" to somebody in the Premier's office, they may not like it. But I felt that, hey, I got to get some attention here. I'm on a deserted island here by myself, and I need some help.

Mr. Beaubien wrote to Mr. King that he was planning to issue a memo to the press "at 3:00 p.m. today unless I hear from Queen's Park." The press release stated:

A councillor from the Kettle and Stony Point Band stated in a local newspaper recently, 'The army camp Indians have strained relations between Kettle and Stony Point and the surrounding communities. We all do not act like the army camp Indians, so please do not think that that all Chippewas act this way.'

This councillor is right. We are not dealing with your decent native citizen, we are dealing with thugs. Are we to assume as law abiding and tax paying citizens, that we have a legal system, in this province and this country, that is two-tiered[?] Do we have a double standard with enforcement of the law?

Enough is enough. Where is the leadership from not only the provincial officials, but the federal officials and from the First Nations itself[?] How can we negotiate with irresponsible, law breaking dissidents[?] We must come to our senses and take back control before something irreparable happens. As citizens of this country, we have a responsibility to be law abiding, reasonable people. This should apply to all who live here.

Mr. Beaubien claimed that it was his intention to publicly communicate what he was hearing from his constituents. He was frustrated that no one in the provincial government was prepared to take responsibility for the situation at Ipperwash Park.

After receiving Mr. Beaubien's press release, Mr. King contacted Paul Rhodes, the Premier's Senior Media Advisor, to seek advice. Mr. King did not speak to the Premier about the press release. Both Mr. King and Mr. Rhodes thought the press release would not be constructive.



Prior to 3:00 p.m., Bill King contacted Marcel Beaubien. Mr. Beaubien conveyed his constituents' frustrations. He mentioned that he had been in contact with the local OPP at Ipperwash. Mr. King thinks he may have told Mr. Beaubien the Premier was following the situation closely, although he did not, in fact, know whether this was the case. Mr. King's practice was to tell MPPs that the Premier "cared very much" about their issues and was "right" on top of them. Mr. King advised Mr. Beaubien not to issue the press release because it was not constructive in terms of the government's desire to end the occupation quickly and peacefully.

Mr. Beaubien did not issue the press release.

Minister Hodgson received a request from Bill King that he speak to Mr. Beaubien. The MNR Minister relayed back through his EA Jeff Bangs that Ipperwash Park was a police matter and that politicians should not comment. Minister Hodgson did not communicate with MPP Beaubien.

#### **10.14 Telephone Conversation between Ron Fox and Inspector Carson after the IMC Meeting**

Within an hour of the IMC meeting, Ron Fox and OPP Inspector John Carson spoke by telephone about the meeting and the progress of the injunction application. Mr. Fox was upset by some of the discussion at the IMC and he shared his frustration with Inspector Carson.

Mr. Fox related that the Premier, through his EA Deb Hutton, had "made it clear ... there [would] be no different treatment of the people in this situation, in other words Native as opposed to Non-Native." The "bottom line," Fox said, was that the Premier "wants them out."

Mr. Fox said he had openly disagreed with comments made by political staff at the IMC meeting. He told Inspector Carson that when he was asked what the police would do in a similar situation where Aboriginal people were not involved, he replied, "[Y]ou can't compare apples and oranges." He had tried to explain to the IMC the complexities of the situation — the issue of colour of right, Aboriginal land claims, and "treaties that go back to pre-Confederation days." Mr. Fox had urged the government to take a carefully planned and measured response to the occupation, and to proceed slowly. It was clear to John Carson that Ron Fox was trying to tell IMC members that "there may be more than meets the eye."

It was also evident to Inspector Carson that the Premier was not interested in differential treatment or the special rights of Aboriginal people. The occupiers were to be considered simply as trespassers whom the Premier wanted out of the park,

and soon. Inspector Carson thought it “unusual” he was privy to this information: “I’m not normally, as Incident Commander, aware of any of the Premier’s views in regards to our day-to-day operations.”

Mr. Fox told the IMC, Inspector Carson learned, that there were thirty-five to forty occupiers, including women and children. He told John Carson: “So I thought I wouldn’t have to explain anymore.” Ron Fox thought this was an important fact to be seriously considered in both government and police responses. Mr. Fox’s frustration was apparent:

I’ll tell you, this whole fucking group is on some sort of testosterone or testausterine high ... I finally had to get right out and say look, I mean here’s the strategy those folk will employ. The women and children will be at the forefront ... That’s what the police are going to be faced with ... I said, “[Y]ou’ve got to understand that the provincial police will never shirk the responsibility, but read their hands will get dirty, read so will the government’s.”

Mr. Fox explained that because the OPP are “part of the government of Ontario,” the public would perceive actions taken by the police “in that same light.”

Mr. Fox agreed his language in this conversation was inappropriate and that some people at the IMC meeting did, in fact, speak with moderation: “I was venting at the time, my personal frustration.” Mr. Fox also agreed it was unnecessary to convey this information to Inspector Carson, and importantly, not to share these thoughts with the OPP Incident Commander would have been consistent with the principle of separation of government from police operations.

The injunction application was also discussed. Mr. Fox reported that in an earlier conversation, Chief Superintendent Coles had expressed no reservation about Inspector Carson providing information for the affidavit of the police perspective of the Aboriginal occupation.

When Mr. Fox asked whether the Inspector knew the demands of the occupiers, Inspector Carson replied, “They have none ... it’s their terminology burial grounds ... so there are no demands other than it’s their property and for us to stay the hell off.” There were warrants, he said, for the arrest of Roderick George, Stewart George, and David George for mischief. David George had been charged for possession of a weapon, a flare, for a dangerous purpose, as well as for assault of a police officer.

Mr. Fox asked Inspector Carson to confirm the accuracy of information conveyed by MNR official Ron Baldwin at the IMC meeting, namely, that the occupiers had seized an OPP car. Inspector Carson responded with laughter. As



discussed, Mr. Fox was surprised that MNR staff, who attended OPP briefings, were transmitting what he considered both operational and unverified information to civil servants and political staff at the IMC meetings. However, Ron Fox did not directly raise this issue with Inspector Carson in this telephone call.

Inspector Carson made it clear he was “hesitant at getting too excited about moving on the park until we have some court injunction.” He added, “[W]e have to have the force of the law behind us to provide some recognition by a court in this land.” Mr. Fox confirmed that the government was planning to apply for an injunction, likely in the “emergent form.”

Mr. Fox raised the issue of negotiations with the occupiers. Inspector Carson said the Stoney Point people had agreed to speak with police the following day after a meeting with their Elders. Inspector Carson added, “I think they are pretty disorganized,” and “pretty nervous” because “they don’t know what we’re going to do.”

This was not the only time Mr. Fox conveyed the Premier’s views to the OPP Incident Commander. As I discuss in the following chapters, Mr. Fox again contacted Inspector Carson on September 6 after he attended the “dining room” meeting with the Premier, Cabinet Ministers, and political staff.

At the hearings, Inspector Carson maintained that the Premier’s interest in and views of the Ipperwash occupation did not alter the way in which he dealt with the First Nations protest. Inspector Carson questioned the appropriateness of Mr. Fox communicating the comments of Premier Harris and political staff to him. But the OPP Incident Commander did not keep this information to himself. Inspector Carson decided to share with his Ipperwash command team some of the information imparted by Ron Fox, including the “political heat” and the Premier’s desire to get the Aboriginal people out of the park. Inspector Dale Linton, A/D/S/Sgt. Mark Wright, and Sergeant Stan Korosec were among the recipients of this information. Not only did Inspector Carson decide to share this information with his officers, but the Incident Commander did not caution his command team not to be influenced by the Premier’s opinions when he conveyed this information to his officers.

### **10.15 Incident Commander Shares with OPP Officers Call from Fox Post–IMC Meeting and the Views of Politicians**

After Inspector Carson’s call with Ron Fox, he met with his command team. At the 3:00 p.m. meeting, Inspector Carson explained that Ron Fox was a member of the Interministerial Committee and it appeared that the government was seeking an interim injunction. He said the Premier had made it clear the Aboriginal

occupiers should receive “no different treatment from anybody else.” Sergeant Korosec, A/D/S/Sgt. Wright, Staff Sergeant Dennis, and MNR Park Superintendent Les Kobayashi were at this meeting.

Inspector Carson explained at the hearings that he was simply “passing information on” from Ron Fox to his senior officers. However, he agreed that it was “unusual” for an Incident Commander to be aware of the “Premier’s views in regards to our day-to-day operations,” and that it was very unusual for a Premier to take direct interest in such a situation. Yet Inspector Carson decided to convey the Premier’s views of the occupation to his command team, officers who had leading roles in the police operations at Ipperwash.

Commissioner O’Grady testified that the Premier’s views were of no relevance to the Incident Commander. Although the OPP Commissioner believes that Inspector Carson was “not influenced” to change his approach to the occupation as a result of his knowledge of Premier Harris’ views, the danger that arises is a possible perception that the Incident Commander was influenced by the political pressure.

In another call to Inspector Carson at about 4:30 p.m., Staff Sergeant Lacroix said that from his discussion with Marcel Beaubien, it was clear Premier Harris had “involved himself” in the Ipperwash occupation and was “quite uptight about it.” Marcel Beaubien, he said, was being briefed and it was evident the government did not consider the occupation an “Indian issue” but rather an “MNR issue and a provincial issue.” It appeared they would “end up evicting,” which Inspector Carson interpreted as removal of the protesters through the injunction process. Inspector Carson was told Marcel Beaubien had been in contact with Chief Superintendent Coles.

Inspector Carson did not consider the park occupation solely an MNR issue in which the province had clear title to Ipperwash Park. In his view, it was also an Aboriginal issue.

Staff Sergeant Lacroix had never been involved in a police incident in which the Premier was directly and personally involved. He was of the view that “Harris has involved himself.” He also thought that if the court application for the injunction was successful, the Premier would pressure the police to evict the Aboriginal occupiers.

At the OPP command post briefing at 4:45 p.m. on September 5, Inspector Carson again told his officers that Mr. Beaubien “has contacted the Premier,” and that the Ontario government considered it an “MNR” issue, “not an Indian issue.”

Commissioner O’Grady was aware that OPP officers met with politicians such as MPP Beaubien. He approved of dialogue and communication between the



OPP and community representatives. However, the Commissioner agreed that the Incident Commander and CMU Commander Lacroix should have refrained from discussing with police officers the Premier's views on issues on which the police made operational decisions. As I discuss in Chapter 11, Marcel Beaubien had a meeting the following day at the command post with Inspector Carson.

When Inspector Carson checked in with Superintendent Parkin that afternoon, they discussed some of the government's deliberations at the IMC meeting — in particular, the status of the injunction and whether the occupiers should be notified of the court application. Superintendent Parkin said, “[P]eople from the government are saying ... why don't we treat them just like a bunch of bikers?” Inspector Carson replied, “[I]f they're prepared for that,” then the government should “get the emergency injunction and get on with life ... [I]f that's their feeling about it ... let's have the appropriate support in law and deal with it.”

Superintendent Parkin said at the hearings that it “isn't unusual” for police to be aware of political pressure but, he cautioned, “it's what you do under the pressure.” It is fundamental, he stressed, that “political pressure ... doesn't affect your decision making.”

Inspector Carson continued to discuss with members of his command team the opinions of the politicians, particularly the Premier's view of the occupation. Shortly after 6:00 p.m., Inspector Carson announced that Acting Staff Sergeant Skinner, the TRU Team Leader, would be part of the command team. He told his officers that there was “heat from political side,” and that “strong comments” had been made “in the House.”<sup>2</sup> Carson testified at the hearings that “political heat” referred to the IMC's discussions as conveyed to him by Inspector Fox — that the Premier wanted the occupiers out of the park and did not want differential treatment for First Nations people. It also referred to MPP Beaubien's comments to Staff Sergeant Lacroix, as well as statements made by Mayor Thomas and Chief Administrative Officer Ken Williams of the Town of Bosanquet. As Inspector Carson said, many “people at the various areas of responsibility” voiced concerns “so it [was] ... coming from all angles.” He did not caution his officers not to be influenced by the views of the Premier or other politicians. OPP officers present at this meeting included A/D/S/Sgt. Wright, Sergeant Korosec, Detective Sergeant Bell, and Staff Sergeant Dennis. Inspector Linton was on the night shift on September 5 and also attended this meeting.

Despite receiving these comments from MPP Beaubien, municipal officials, and other politicians, Inspector Carson considered it “business as usual,” and

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2 Note that the House was not sitting at that time.

maintained his approach to “continue to pursue our injunction process.” The OPP Inspector did not intend to deviate from his plans because of comments made by provincial or municipal politicians.

In hindsight, Inspector Carson thinks he “probably erred on sharing far too much information” with his officers. John Carson explained:

... My approach to this was to try and keep the team informed of what was going on to the best of my ability, and being open with them around what was happening in the background, so they understood what I was dealing with and so they could have some appreciation in regards to time lines and all the logistics that goes with an operation like this ... Quite frankly in hindsight, do they need to know all of that? They didn’t need to know all of that. And I shared it with them and that’s the fact.

In my view, the Incident Commander should not have shared with his officers at Ipperwash the discussions he had had with staff Sergeant Lacroix and Inspector Fox about political pressures from Queen’s Park or from local politicians such as Marcel Beaubien.

It created the risk or the perception of risk that his officers would be influenced in their actions by the exasperation of Mr. Beaubien that the OPP were not taking sufficient action to end the occupation, or the view of the Premier and other political staff that the occupation should end as quickly as possible. Imparting this information to his officers could compromise the approach of the OPP to the First Nations protest, which was to take a measured response to the occupation. It could also frustrate the objectives of Project Maple, which were to negotiate and resolve peacefully the occupation of Ipperwash Park by the Aboriginal people.

### **10.16 MNR Park Superintendent Invited to Command Post Meetings**

It was at the 9:25 a.m. command post meeting of Inspector Carson and his command team that Mark Wright suggested that “an MNR representative,” Park Superintendent Les Kobayashi, attend their hourly meetings. A/D/S/Sgt. Wright explained that because the province was the lawful owner of Ipperwash Park and the “complainant” was the Ministry of Natural Resources, Les Kobayashi, the MNR “man at the scene” would be helpful in conveying information to the police, such as the status of the civil injunction. Inspector Carson thought this was a good idea. Mr. Kobayashi would be apprised of events at the park and could keep



his MNR “superiors informed as to the status of the ongoing occupation.” It would also enable Mr. Kobayashi to provide input to the police. From this point forward, MNR Park Superintendent Kobayashi regularly attended meetings at the command post.

As I discuss in the forthcoming chapters, both Inspector Carson and A/D/S/Sgt. Wright realized in hindsight that this was not an “appropriate decision.” Mr. Kobayashi should not have been a regular attendee at the command post meetings. The OPP should have communicated with and obtained relevant information from the MNR Park Superintendent, but Mr. Kobayashi should not have been privy to command post discussions regarding intelligence or the OPP’s plans, deliberations, or strategies. Mark Wright conceded that there was “some confusion as far as information leaving that command post and going to places where it perhaps shouldn’t have,” such as to civil servants at the Interministerial Committee meetings and to politicians at Queen’s Park.

Les Kobayashi was at the command post for most of September 5 and 6, and remained at this site throughout the night of September 5. Mr. Kobayashi provided regular reports to his MNR superior Peter Sturdy, and the command post police briefings were the primary source of the information he relayed. As Mr. Kobayashi said, “99 percent of it was from the briefings” at the command post. Mr. Kobayashi knew that Mr. Sturdy would convey this information to other government officials.

Both Inspectors Carson and Linton conducted these command post briefings and knew the MNR Park Superintendent was transmitting this information to Mr. Sturdy. However, they never asked Mr. Kobayashi to leave any command post briefing, nor did they place any restrictions on the information that could be conveyed to Mr. Sturdy. Mr. Kobayashi considered it his “role ... to move information forward,” and he was not concerned about its accuracy or reliability. Throughout the occupation on September 5 and 6, Mr. Sturdy received reports by telephone and e-mail from his staff.

Mr. Kobayashi was not the only MNR official at the command post briefings. Ed Vervoort (MNR Enforcement Specialist in Aylmer District) also participated in and received police information at the September 5 and 6 OPP command post meetings.

Mr. Sturdy was a participant at the September 5 and 6 IMC meetings where he shared Mr. Kobayashi’s unverified information of automatic gunfire by First Nations people and the presence of weapons with civil servants and political officials. Peter Sturdy did not take measures to verify the information he received from Mr. Kobayashi or Mr. Vervoort at Ipperwash. The MNR Zone Manager (Southwestern Ontario) simply assumed the information from the OPP command

post briefings was accurate, and that he was not prohibited from passing it on to others. Mr. Sturdy considered it his “role” to “collect this information” from Mr. Kobayashi and Mr. Vervoort, and “to pass up that information to senior management within the Ministry of Natural Resources.” Mr. Sturdy had no hesitation in sharing this information with other bureaucrats and political staff in the Ontario government.

Inspector Carson conceded that Les Kobayashi had “access to pretty much all of the police information, which probably wasn’t totally appropriate,” and which placed the MNR Park Superintendent in an “awkward spot.” Inspector Carson said, “[W]e had no appreciation of the context that could be put to certain information, and that was probably the problem that presented itself” as the information moved up the chain on the Ministry of Natural Resources side.

If Inspector Carson had to do it over again, he would have brought Mr. Kobayashi “into the meetings where it was necessary to discuss issues that he needed to participate in, and share with him the information that was essential for his ministry.” However, he would preclude him from participating in all aspects of the meeting. In retrospect, he should have limited the participation of the MNR representatives in discussions with his command team. I discuss this in greater detail in the forthcoming chapters.

As I discuss in the next chapters, MNR officials should not have participated in command post briefings with the Incident Commander and other OPP officers. The MNR Park Superintendent should not have been present at command post discussions about OPP strategies and intelligence, nor should he have been a recipient of information of unconfirmed reports by the OPP.

## **10.17 Purpose of Police Checkpoints**

Setting up checkpoints was part of Project Maple. On Inspector Carson’s instructions, police checkpoints were set up early on September 5. There were several purposes for the checkpoints:

1. to collect information on the people entering the area;
2. to establish a police presence and provide a sense of security to calm residents; and
3. to contain the area if necessary.

The checkpoints were not used to restrict traffic until the evening of September 6.

The ERT officers were instructed on their role at the checkpoints. Officers were to stop all cars and ask each driver to produce his/her licence, and ask



passengers for some identification. Police were only permitted to conduct searches of the vehicles on consent. The visible presence of officers in the vicinity of Ipperwash Park was important to the OPP.

On the morning of September 5, Inspector Carson gave Sergeant Korosec a kit with “checkpoint cards” for officers at the checkpoints to record details of suspicious individuals and vehicles. This information would be relayed to intelligence officers in Forest.

The OPP set up the following checkpoints in the early morning hours of September 5:

Checkpoint “A” (Alpha) — East Parkway Drive near Army Camp Road

Checkpoint “B” (Bravo) — East Parkway Drive at Ipperwash Road

Checkpoint “C” (Charlie) — Army Camp Road at Sunnydale Trailer Park

Checkpoint “D” (Delta) — Army Camp Road near Highway 21

Beginning on September 5, the OPP stopped vehicles at the checkpoints and asked for identification. Some First Nations people publicly complained about being compelled to produce identification and questioned the authority of the police to request these documents.

In fact, Superintendent Parkin asked Inspector Carson under what authority the OPP officers were acting. Inspector Carson did not know. He replied, “I’d have to check with the crime guys, but I’m not really sure right off the top of my head, without trying to string you a line here.” Superintendent Parkin wanted to know if OPP officers were searching the vehicles. Inspector Carson said this was not being done. Inspector Carson knew the police could ask drivers for identification, but he did not know if this extended to the passengers. He was aware the OPP did not have authority to search vehicles at the checkpoints.

Shortly after his call with Superintendent Parkin, Inspector Carson asked Detective Sergeant Richardson about the “vehicle checks” at a command post briefing. Richardson consulted with lawyers at the Crown Law Office, who confirmed the police had the authority under the *Highway Traffic Act* to stop cars and ask for identification.

Constable Larry Parks was assigned to Checkpoint “C” at Army Camp Road at Sunnydale Trailer Park on September 5. He understood his task was to collect names and determine if “outsiders” or “agitators” from outside the area were entering Ipperwash. He considered this an intelligence-gathering function. During his shift, he stopped each vehicle that approached the checkpoint and asked the

driver for his or her license. He could not recall if he asked passengers for their names and identification. Vehicles were not prevented from travelling beyond the checkpoints toward the park.

Constable Denis LeBlanc was also on duty at Checkpoint “C” on the morning of September 5. He understood the purposes of the police checkpoints were to create a visible police presence and to advise people as to what was going on at the park if they were driving in that direction.

Sergeant George Hebblethwaite considered it his role to provide “enhanced police presence” in the area. He was assigned to roam the Ipperwash area and check in with his officers at the checkpoints and provide them with any support required.

The police presence was evident by the early morning hours of September 5. As A/D/S/Sgt. Wright said, by daylight there were “checkpoints and patrols” and “an overwhelming police presence.”

## **10.18 Reaction of the Aboriginal People to the Increased Police Presence**

It was clear to the Stoney Point occupiers, to Kettle Point residents, and to Aboriginal people from other communities who were visiting the park on September 5, that there was a noticeable increase throughout the day in the number of OPP cruisers and police surveillance. The First Nations people observed police checkpoints at the various locations. Glen Bressette saw police stationed between the main gate of the barracks on Army Camp Road and Highway 21 and noticed they were not wearing their conventional uniforms. OPP officers asked Glen Bressette to produce his licence before allowing him access to the army camp.

Other occupiers saw police officers at the corner of East Parkway Drive and Army Camp Road. Nicholas Cottrelle also noticed the police were wearing grey uniforms and black bulletproof vests. David George saw police cruisers and officers at Matheson Drive. Gina George saw police stationed at Ravenswood Road. As David George said, there were “all kinds of police driving up and down the roads ... they were all over the place.”

The park occupiers also noticed unusual boat activity on Lake Huron. A boat was anchored north of the park and remained in this location throughout the day and into the night. With binoculars, Aboriginal occupiers such as David George saw “OPP” inscribed on the side of the boat. J.T. Cousins saw another police boat relieve the officers who then travelled on Lake Huron in the direction of Grand Bend.



The increased presence of the OPP in Forest and in the area surrounding Camp Ipperwash was also apparent to Cecil Bernard George. As he drove toward Grand Bend, an OPP officer instructed him to stop at Highway 21 and Outer Drive. Mr. George explained:

A cruiser ... was sitting on the corner there watching me go by and I guess as soon as he noticed that I was Native, the lights came on and [he] pulled me over.

The police officer did not give Cecil Bernard George an explanation for stopping him and for asking him for his name and identification. Mr. George thinks he may have mentioned he was an elected Council member. The officer told Mr. George he was free to go.

The increased number of OPP officers patrolling the area was also evident to Gerald George. At the OPP Forest Detachment on Townsend Line, Gerald George saw an unusual number of police cars as well as a trailer that had arrived after the park occupation on September 4. This trailer was serving as the OPP command post.

Helicopter surveillance was another method the police used to patrol Ipperwash Park. Many Aboriginal witnesses were upset at the low altitude at which these helicopters flew. Glen Bressette said the helicopter was “low to the ground, just above the tree tops. ... it was blowing up all the leaves, making the dust fly.” He saw a man hang outside the helicopter photographing the occupiers with a large camera. Mr. Bressette tried to hide behind a tree but the helicopter followed him.

Carolyn George and other Aboriginal people in the park became agitated with the police helicopter activity; it was “irritating” and “harassing” and “they were flying around, coming down real low, blowing up a lot of dust.” Tina George also had an encounter with a hovering helicopter at the maintenance building on September 5. She spent the day transporting her belongings from her residence in Thedford to Ipperwash Park, unpacking her daughters and herself, and cleaning the maintenance building that they had moved into. Upon returning with her children from the candy store on Army Camp Road, a helicopter flew at a low altitude near the maintenance building, stirring up debris and frightening Tina George’s younger daughter. She told her daughters to go into the maintenance building. Ms. George screamed at the pilot and passengers in the helicopter:

... I was yelling at them, and it made me mad because I [had] just got done cleaning, and there was about at least an inch of dust inside, on the floor, on top of desks.

Had she had a rock at her disposal, she would have thrown it at the helicopter. In exasperation, Tina George decided to “moon” the helicopter:

They were so low that if I had a rock, I would have liked to have thrown it, but I didn't. The only thing I [could] think of to do was turn around and shoot them the moon.

The helicopter left the area.

Tina George did not know that the OPP had installed a video camera in the maintenance building to monitor the occupiers' activities. It was not until eight years later, in September 2003, that Ms. George learned the police had videotaped her in September 1995. Tina George was “stunned ... surprised,” and “shocked” when she learned of this invasion of her privacy. She said it was “like somebody standing out in the dark looking in your windows at night.”

Some Aboriginal people travelling in and out of Ipperwash Park and the army camp on September 5 became impatient with the number of times the OPP required them to stop and produce identification. Carolyn George was at the park that day with her daughter and her three-week-old granddaughter, eating, drinking soda, and socializing with the occupiers. Gina George, who was scheduled to work a midnight shift at her job that evening, decided to do a “trial run” to determine the amount of time it would take to get through the police checkpoints. At each checkpoint, she was asked her name, the purpose of her journey, and to produce her driver's licence. She asked one of the officers: “Why can't you just ask the guy at the previous checkpoint? Why can't you radio and ask him? ... I've already showed this several times.” She said at the hearings:

So I've actually gone through a number of checkpoints and at every one I had taken several minutes ... [It] seemed very unusual because if you're checked at the first one, why do you have to go through every single one when it's just a couple [of] hundred yards down the road?

In the afternoon of September 5, some children in the park used mirrors to shine sunlight into the faces of police officers and members of the media who had congregated in the sandy parking lot and at the intersection of East Parkway Drive and Army Camp Road. The children had taken the mirrors from the park washrooms, and they tried to irritate the OPP and the reporters. Stephanie Cottrelle, who was about seven or eight years old, her ten-year-old sister Amanda, and fourteen-year-old Leland White were among those who participated in this activity.

The occupiers also engaged in mock police chases on September 5. Marlin Simon was “chased” by the “OPP WHO” car. Robert Isaac's car was painted



with the words “OPP WHO,” intended to mock the provincial police. The mock chase took place on the interior road that runs parallel to Army Camp Road and into Ipperwash Park. The installed siren of the “OPP WHO” car was turned on. Marlin Simon said, “I took off like we were having a police chase and went flying by ... [a] couple of road blocks. And then we went down to the park and did like a little donut around here and had like our little mock police chase.”

People from the media stood at the intersection of East Parkway Drive and Army Camp Road and at the sandy parking lot. Some occupiers “did donuts,” driving in circles in front of the cameras. While several police officers were visibly displeased, others were amused by the car chase, said Marlin Simon.

## **10.19 Plans to Initiate Dialogue with the Occupiers**

### ***10.19.1 Who Should Negotiate with the Aboriginal People?***

In the OPP Superintendent’s calls with Inspector Carson on the morning of September 5, Tony Parkin wanted to know the status of negotiations with the occupiers. Superintendent Parkin was well aware that Project Maple’s objective was a negotiated solution, and that one of Inspector Carson’s “first requirements” was “to try and open up some communication” with the occupiers. Superintendent Parkin was told that it had been difficult to enter into meaningful negotiations on the evening of September 4 because some of the occupiers had consumed alcohol. The OPP had been told by the Aboriginal people to return at noon on September 5, at which time the police were hopeful they could enter into a dialogue with the occupiers.

Inspector Carson had made it clear at the briefing of his command team at 9:25 a.m. that he wanted a meeting arranged with the occupiers. In attendance were A/D/S/Sgt. Wright, Sergeant Seltzer, Detective Sergeant Bell, Detective Sergeant Richardson, and Staff Sergeant Dennis. Carson was anxious to initiate a dialogue with the park occupiers to discuss their concerns in the hope that issues could be resolved. He designated Sergeant Seltzer, who had training and experience in crisis negotiations, as the OPP negotiator. It was also suggested that Lorne Smith, a retired OPP officer who had a long-standing relationship with people at Kettle Point, be contacted to see if he was available to be part of a negotiation team.

Inspector Carson agreed with Sergeant Seltzer that the negotiator should remain consistent and the same person should communicate with the First Nations occupiers. As lead negotiator, Sergeant Seltzer thought it was important that he receive continuous updates about events at Ipperwash Park.

Brad Seltzer had set up the negotiation room earlier that morning in the OPP Forest Detachment. He tested the equipment to ensure everything was in working order. Sergeant Seltzer had no formal First Nations training.

Sergeant Seltzer contacted Lorne Smith and learned that Mr. Smith was uncomfortable in the role of negotiator as a result of past experiences, including repercussions to his family. Lorne Smith had been a Staff Sergeant at the Forest Detachment and lived in the community. He ultimately agreed to accompany Brad Seltzer to speak to the Aboriginal people at Kettle Point.

Later that morning, Sergeant Seltzer discussed the prospect of using a First Nations negotiator. Inspector Carson suggested Constable Vince George but was concerned the OPP officer might suffer adverse consequences in the Kettle and Stony Point community after the occupation ended. Inspector Carson knew there was “already some strain in the community, particularly with Miles Bressette” (Chief of Police at Kettle and Stony Point), who was not receptive to “Vince George and Luke George coming and going on Kettle Point.” Inspector Carson “didn’t want to aggravate” the “tenuous relationships that already exist[ed].” It was decided that Sergeant Seltzer would discuss this issue with Vince George.

It was also suggested that Sergeant Marg Eve be involved with the negotiating team on the following day, September 6. Sergeant Eve was a trained negotiator who had experience policing First Nations territories, but she had never negotiated group disputes such as an occupation. There was no discussion of seeking a First Nations negotiator outside of the community. First Nations negotiators, such as Bruce Elijah, Bob Antone, or National Chief Mercredi might have been of great assistance in opening up a dialogue with the Aboriginal occupiers.

According to Sergeant Seltzer’s notes, he made contact with Constable Vince George at 6:00 p.m. that evening. He noted that Constable George wanted time to reflect on whether he wished to act as a negotiator on behalf of the OPP because he had to work in this community “after all is done.”

Constable George had no recollection of contact with Brad Seltzer regarding his role as a negotiator in the September 1995 Ipperwash occupation. Vince George had no negotiation skills or negotiation training. Although he would have been prepared to initiate dialogue with the occupiers, he would not have participated in the negotiations. At no time on September 5 or 6 did Constable George serve as a negotiator or attempt to introduce a negotiator to the Aboriginal occupiers at Ipperwash Park.

In my view, OPP officers whose responsibility is to open up a dialogue with the Aboriginal occupiers should have knowledge of the Aboriginal community, their history, and issues of concern to them. Without such information, it is



difficult to establish meaningful communication and achieve the objective of de-escalating the Aboriginal protest. The police should have tried to find an appropriate person, such as an Elder or other respected person, to meet with the protesters and to act as a mediator. To peacefully resolve Aboriginal protests, it is critical to involve First Nations officers and police services.

Inspector Carson did not seek the assistance of National Chief Mercredi who had offered to mediate the July 29, 1995, army camp occupation. The Incident Commander did not contact the Assembly of First Nations, the Chiefs of Ontario, or the Union of Ontario Indians. Nor did he ask Chief Tom Bressette if anyone on the Band Council could help initiate negotiations with the occupiers. John Carson did not think Chief Mercredi, Chief Bressette, or Kettle Point Band Councillors would be “welcome at the park or at Camp Ipperwash.” Given Miles Bressette’s past dealings with the OPP, Inspector Carson did not think the First Nations police at Kettle Point would be receptive to assisting the OPP in the park occupation.

Inspector Carson did not seek the assistance of the OPP’s First Nations police branch to open up communication with the Aboriginal occupiers. He did not know if any of these officers had a relationship with this Aboriginal community. Inspector Carson decided to approach local OPP officers, such as Constable Vince George, to enter into a dialogue with the occupiers. Yet, as mentioned, Constable George did not have negotiation skills, and Inspector Carson had concerns about repercussions to Vince George if he performed this role. Vince George did not act as a negotiator or attempt to enter a dialogue with the occupiers on either September 5 or 6.

Inspector Carson knew Bruce Elijah and Robert Antone had acted as mediators/negotiators at Captain Smith’s request when the army camp was occupied on July 29, 1995. He also knew these two Aboriginal men had conducted a cultural awareness program for the military. Yet John Carson did not consider using the services of either Mr. Elijah or Mr. Antone to assist in communicating or negotiating with the park occupiers. Inspector Carson could not offer an explanation at the hearings for not drawing upon these important resources.

Bruce Elijah said he would have assisted in the park occupation had he been asked by the OPP, the Kettle and Stony Point Band, or the Stony Point group. He said at the hearings that his role is “to avoid bloodshed ... and that’s any side, whether it’s our side or the other side.”

As I discuss in the next chapters, Cyndy Elder from the Manitoulin area called the OPP on September 6 to offer her assistance. Inspector Carson did not return her call. In fact, Ms. Elder had contacted John Carson in August after the army camp occupation to offer her assistance as a negotiator/mediator with an organization called “Approaches Mediation.” Inspector Carson explained at the

hearings that he was too busy to return her call, and that he wanted someone “local” who could do something “imminently.”

Chief Superintendent Coles thought perhaps an important opportunity was missed in not having a person from the Aboriginal community communicate with the occupiers to discuss their issues and concerns. He agreed that such a person might have been instrumental in de-escalating the situation. He also agreed that the presence of a third party is important because the OPP could misconstrue the occupiers’ concerns and intentions, and conversely the First Nations occupiers could misinterpret the OPP’s intentions.

As I discuss in the chapters dealing with the events of September 6, 1995, this is precisely what occurred — the conduct of both the provincial police and the Aboriginal occupiers created misconceptions. Outside resources, such as Chief Mercredi, Cyndy Elder, or other First Nations negotiators, were not part of the operational plan. In my view, this should have been an important component of Project Maple. Aboriginal negotiators from outside the community had been used in the past to de-escalate volatile situations at Ipperwash. When the military camp was occupied at the end of July 1995, the military asked Bob Antone and Bruce Elijah to help defuse the situation, assist in the resolution of the issues, and help ensure that people’s safety was not placed in jeopardy.

OPP Chief Superintendent Coles believes there is a need for “on call” conflict resolution teams consisting of Aboriginal and non-Aboriginal negotiators who can be dispatched to communities to assist in the resolution of protests, blockades, and occupations.

### *10.19.2 Attempts to Communicate with the Occupiers Fail*

Shortly after noon, A/D/S/Sgt. Wright, Sergeant Seltzer, and MNR Park Superintendent Kobayashi returned to Ipperwash Park in accordance with Bert Manning’s instructions the previous night. Their purpose was twofold: to initiate dialogue with the occupiers, and to serve the trespass notice.

They drove to the sandy parking lot and stood at the fence in an attempt to get the attention of the Aboriginal people in the park. The occupiers exchanged some words but refused to engage in substantive discussion. A/D/S/Sgt. Wright’s goal was to try to introduce Sergeant Seltzer, the negotiator, but they “never got to that.” There was some conversation with people congregated at the park store, but there was no “meaningful” dialogue. Mr. Kobayashi was unable to formally serve the trespass notice to the occupiers.

A/D/S/Sgt. Wright was dressed in civilian clothes when he approached the park fence. Both he and Mr. Kobayashi wore bulletproof vests. Sergeant Seltzer



wore a full police uniform. After this encounter with the occupiers, it was decided that Sergeant Seltzer should dress in civilian clothes rather than police attire, particularly in his role as negotiator.

A significant number of media representatives were at the sandy parking lot at that time. Sergeant Seltzer did not think it would be difficult to open up a dialogue with the occupiers at Ipperwash Park if the media were present and overheard their conversation. In my view, particularly given the difficulty the OPP were experiencing initiating dialogue with the Aboriginal occupiers, it would have been better for the police to try and communicate with the occupiers without the presence of the media.

A/D/S/Sgt. Wright, accompanied by Sergeant Seltzer and Les Kobayashi, decided to try again at the gate to CFB Ipperwash. Bert Manning appeared and told A/D/S/Sgt. Wright he was “happy that his people had their ancient burial ground.” Wright explained that he wanted to discuss the park occupation. Mr. Manning replied that he would speak to the Elders. Bert Manning asked that the police blockades be removed, but Mark Wright made it clear the police would not do so. The request to remove the roadblocks was declined because the OPP wanted to have control over the people entering the park. A/D/S/Sgt. Wright informed Mr. Manning that the Aboriginal people were unlawfully in the park, that an injunction was being sought, and that the occupiers would have the opportunity to explain to the court their presence in Ipperwash Park. Bert Manning suggested that Mark Wright return the following day at 3:00 p.m.

The Aboriginal occupiers explained their reluctance to communicate with the OPP: (1) they were fearful they would be targeted by the police and that criminal charges would be laid; and (2) the occupiers did not believe that speaking to the police would advance their objective, namely, the return of the land.

Gina George testified that when she was in the park with her daughters on September 5, she noticed some officers who approached the fence line from the sandy parking lot. She recognized one of the officers as Mark Wright. They asked to speak to one of the “leaders” of the occupiers. People in the park ignored the OPP. Gina George described her brief exchange with the police:

And my daughters and I were actually along some trees there, and I noticed that there were some officers who had come up to ... the sandy parking area outside of the park fence line. And they were calling to people who were riding by ... “Hey, we want to talk to one of your leaders,” and they kept saying that to people. And people just weren’t paying attention to them. They would just ride by and just disregard what they were saying ... I think they noticed me standing there with

the girls, so then they hollered at me ... “We want to talk to one of your leaders.”

Pointing to her children, Ms. George said, “[T]hese are our future leaders, so you can speak to one of them if you like.” The police ignored her comments.

Gina George explained why the occupiers refused to speak with the OPP. She said their dispute was with the government, not the police who had no power to resolve the issues confronting the Stoney Point people. The occupiers felt nothing beneficial would materialize from a dialogue with the OPP, who simply wanted the Aboriginal people to leave the park:

Q: Can you tell us at all why there was no one from inside of the park that was willing to speak to the police?

A: ... [W]hy would they want to speak to the police? Because this didn't have anything to do with the police. It had to do with the government taking and selling those park lands, and why wasn't the government there to talk to these people? That was the faction that they should be talking to, not the police. What were the police going to do? They weren't going to resolve it. So it was kind of pointless to talk to them.

Q: That was the sentiment inside the park, was it?

A: Yes.

Q: Okay. Do you know whether there was anybody from government that was prepared to come to or in fact came to speak to the people inside the park?

A: I don't think there was anybody from the government that came there or was willing to come and speak to the people there.

Q: When you say “the government,” is there anybody in particular that you refer to? Or —

A: Well, I think because Indian Affairs was involved in that, they should have come there and intervened. Somebody should have come and talked.

Nicholas Cottrelle also saw A/D/S/Sgt. Mark Wright and MNR Park Superintendent Les Kobayashi standing outside the park near the fence line, attempting to attract the occupiers' attention. Mark Wright was doing all the talking. He asked Nicholas Cottrelle to identify the leader of the park occupation.



Mr. Cottrelle replied that there was no leader. Mark Wright then asked if there was any occupier with whom he could talk, and Mr. Cottrelle replied that that was unlikely. A/D/S/Sgt. Wright asked Nicholas Cottrelle to convey this request to the Aboriginal people in the park.

Marlin Simon also gave evidence that the OPP tried to establish contact on September 5, but that the occupiers kept their distance from the police. He recognized OPP officer Mark Wright. Mr. Simon reiterated that “nobody wanted to be seen as a leader of the occupation.” The Aboriginal people were fearful they would be targeted and criminally prosecuted if they engaged in discussions with the police.

Mark Wright subsequently reported to Inspector Carson his failed attempt to initiate dialogue at the park. The occupiers, he said, were “very disorganized” and “very uncomfortable.” He also conveyed Bert Manning’s comment that “they are happy to have [their] burial ground.” Mark Wright suggested that if the police wished to enter the park, “tactically, it is easy to get in the park at the canteen area” — the park store. A/D/S/Sgt. Wright made his suggestion in the event the Incident Commander decided to cohabit with the occupiers.

The OPP were clearly having difficulty initiating communication with the Aboriginal occupiers. They considered the absence of an identified leader to be a significant impediment. But Inspector Carson said:

We were prepared to talk with anybody. It didn’t have to be someone who was a self-appointed or elected leader, so to speak. We were prepared to discuss with anyone who would open some discussion. But we were met at every turn with no ability to strike up that dialogue ... My perception was there was every effort to avoid it.

The occupiers had been verbally informed they were trespassing. The OPP were waiting for the government’s application to the court for an injunction.

## **10.20 Work Done by Ontario Government Officials after the IMC Meeting**

After the September 5 IMC meeting, it became clear that one of the reasons for the park occupation was the claim of the existence of a burial ground. Julie Jai asked Dave Carson to research the government’s obligations regarding Aboriginal burial grounds, including requirements under the Ontario *Cemeteries Act*.

At about 3:00 p.m., a legal sub-group, consisting of Julie Jai and MAG lawyers Tim McCabe and Elizabeth Christie, met to discuss the various issues surrounding the injunction in order to determine the government’s legal options.

Scott Hutchison (a MAG lawyer at the Crown Law Office — Criminal) was asked to draft the section relating to *Criminal Code* charges. The purpose of the memo was discuss the advantages and disadvantages of the available legal options.

Tim McCabe and Elizabeth Christie worked in the law library at 720 Bay Street on the evening of September 5. Mr. McCabe considered this a good case for an ordinary injunction, not an *ex parte* injunction. If the Ontario government chose to proceed under the *ex parte* rules, Mr. McCabe thought a judge would either dismiss the application on the basis that it was inappropriate, or would adjourn the matter so that documents could be served on the Aboriginal occupiers. In the senior litigator's opinion, proceeding under the *ex parte* rule would take more rather than less time.

A briefing document entitled "Criminal and Civil Proceedings to Terminate the Occupation of Ipperwash Provincial Park by the 'Stoney Pointers'" was prepared as a result of the legal sub-group meeting, with different authors writing the various sections. From a legal perspective, they advised the Crown to seek a regular injunction on an expedited basis, not an *ex parte* injunction.

## 10.21 The TRU Team Arrives on the Evening of September 5

Before noon on September 5, Inspector Carson had a discussion with Acting Staff Sergeant Skinner regarding the role of the TRU team. The Incident Commander asked Kent Skinner to have TRU report to Pinery Park at 7:00 p.m. Inspector Carson made it clear that TRU was for "backup." He directed Acting Staff Sergeant Skinner to keep the gun vehicles out of sight. Inspector Carson did not want the large "white cube vans ... travelling around the community ... raising the anxiety level."

The TRU team arrived at Pinery Park on the evening of September 5. Because the Incident Commander did not want the TRU team driving through town, Acting Staff Sergeant Skinner instructed his officers to take the back roads up to Pinery Park. The ten TRU officers, including Kent Skinner, arrived at Pinery Park in three cube trucks, two Suburbans, and one van. The team was briefed and Acting Staff Sergeant Skinner distributed copies of Project Maple and binders containing information on the Ipperwash occupiers.

## 10.22 Altercation with Police: The Picnic Table Incident

It was dark on the evening of September 5 when the occupiers decided to move picnic tables from inside Ipperwash Park to the sandy parking lot. They carried about ten to twelve tables over the fence into the sandy parking lot, which was at Army Camp Road and East Parkway Drive.



There were two main reasons for this decision: the occupiers wanted to establish that the sandy parking lot was part of their territory, and they wanted to control access to this area. Clayton George, one of the Aboriginal men who carried the picnic tables into the sandy parking lot, responded to the following questions posed at the hearings:

Q: ... [Y]ou're out in the sandy parking lot for a couple of reasons; weren't you? The first reason is that, as far as you were concerned, that sandy parking lot belonged to you and your peoples and you were perfectly entitled to occupy it; right?

A: Yes.

Q: And that was one of the points that was being made by being out there, that we are occupying the sandy parking lot, not just the interior of the park; right?

A: Yes.

Q: Right. And the other point that was being made is that if you barricaded the sandy parking lot, then that would prevent non-occupiers from using that area to gain access to the park. That was the other reason for doing it; right?

A: Yes.

Q: ... [T]he other reason ... that you brought out all of these picnic tables and created a barricade in the sandy parking lot area was because you and the others who were occupying could then have some ability to control the access along Army Camp Road and East Parkway Drive. Am I right?

A: Yes.

Stewart George was involved in the picnic table incident and shared the occupiers' view that the sandy parking lot was "our land ... we believed that it was ours."

Kevin Simon explained that one of the reasons they wanted to prevent access to the beach was to separate themselves from residents in the community who had previously caused problems. These people had made derogatory and racist remarks and challenged the occupiers' land claims. Mr. Simon said they were trying to avoid these "verbal and physical confrontations." Kevin Simon further commented:

... We had been through a lot of problems with people coming on to the property in behind us along the beach area ... especially before we had taken over the park ...

... [P]eople's cars would be vandalized, trailers, tents, [and] people would be jumped ... different people ... were attacked along the beach in different areas. So when we had gone into that park, we had talked about closing that off completely so that people wouldn't be able to continue doing ... what they had been doing to us. And we didn't really feel that it was that big of a deal because it was part of our land, too, we felt. And it was just access to the park basically, and the beach on the park.

His brother Marlin Simon similarly testified:

... [I]f there was any, let's say, rednecks or whatever wanting to start trouble, they'd probably pull up in that area and start yelling obscenities or whatever. So we'd just close it off so that that kind of stuff wouldn't happen.

The picnic tables were placed in a circle in the sandy parking lot to prevent access to the beach from the paved road at Army Camp Road and East Parkway Drive. Aboriginal witnesses referred to it as a "blockade" or a "barricade." Some of the "old beat-up" picnic tables were used as firewood for the campfire. Kevin Simon and other occupiers roasted hotdogs.

Several Aboriginal people, including Stewart George, Clayton George, David George, Dudley George, Leland White, Gabriel Doxtator, Isaac Doxtator, Nicholas Cottrelle, Kevin Simon, Marlin Simon, Larry French, J.T. Cousins, Charles George, and Wesley George, were in the sandy parking lot when the OPP approached after 10:00 p.m.

It was at 10:15 p.m. when Constable Whelan and his partner Constable Japp saw several First Nations people carry picnic tables outside Ipperwash Park. They appeared to be erecting a barricade across the sandy parking lot. The constables radioed for assistance to remove the picnic tables.

Constable Whelan recorded in his notes at that time: "Several natives carrying picnic tables onto the roadway at Army Camp Road and East Parkway to build a barricade across the roadway." Marlin Simon said that police activity visibly increased after the OPP patrolling the area noticed the occupiers had moved picnic tables into the sandy parking lot.



Constables Gransden and Dougan heard a radio request for assistance by officers at the intersection of Army Camp Road and East Parkway Drive. They were stationed at Checkpoint “A” on East Parkway Drive at the Tactical Operations Centre (TOC) at the time.

Officers in about three OPP cars drove toward the picnic tables. David George did not think the police had any intention of making contact with the picnic tables. Some occupiers, such as J.T. Cousins and Isaac Doxtator, were sitting on one of the picnic tables at that time. One police cruiser deliberately rammed into the picnic table on which the Aboriginal people sat. Isaac Doxtator yelled at J.T. Cousins and others on the table to move their legs. Isaac Doxtator described the confrontation:

An officer ... told us we were trespassing and asked us to leave. Nobody moved so he got back in his car ... a vehicle came driving down at us. I was sitting right on a picnic table ... and J.T. was sitting beside me. The police officer came down and smashed right into the table right here. And ... there was another police car on each side of them on the back. Three vehicles pulled down and they pushed the table. And I told the guys, “Watch your legs,” and J.T. got on the table and the police car almost got stuck ... I think he dropped it in low gear and he just floored it and pushed the table again. And I told the guys, “Jump on here.” So we’re trying to hold the table down.

The table began to break from the impact of the cruiser. J.T. Cousins leapt off the table, and along with other young Aboriginal men, ran to the fence and into the park.

With the push bars on the front of his police cruiser, Constable Whelan had “edged up to this pile of tables” and “pushed them to one side so there was an opening, so we could get through.” In response, Isaac Doxtator, who had been sitting on a picnic table, and other occupiers tried to hold the table down against the force of the cruiser. Some of the occupiers started “pushing back with the picnic table.” The front end of the cruiser went under the bench of the picnic table, at which point Aboriginal people, including Isaac Doxtator, Marlin Simon and Larry French, lifted the picnic table and flipped it onto the hood and windshield of the OPP car. Isaac Doxtator said that they “had no choice.” David George testified, “[W]e’ve got to defend ourselves if the cops are coming in ramming picnic tables.”

Yelling and commotion ensued. Some of the occupiers, such as David George, Wesley George, and Isaac Doxtator, threw rocks in the direction of the OPP

cruisers. Marlin Simon explained that they were trying to “get the police to take off and leave us alone.” Larry French heard an OPP officer swear at the police officer who had rammed the picnic table and “told him to get out of there.” The Aboriginal men ran toward the fence and into the park, fearful they would be arrested.

After hearing the radio transmission, Constables Gransden and Dougan drove to the site. They parked on East Parkway Drive and walked toward the picnic tables piled two tables high across the entrance to the parking lot, blocking access to the beach. Constable Gransden saw the “front push bumper” of Constable Whelan’s car “resting against one of the picnic tables that was stacked in the pile ... [T]he cruiser [had] pushed the picnic tables” back, creating an opening in the barricade.

The officers tried to remove the stack of picnic tables. As the police walked toward the First Nations people, the occupiers retreated into the park. A flurry of rock throwing ensued, breaking the windshield on Constable Whelan’s cruiser and narrowly missing him. Three police cruisers were damaged by the rocks.

Kevin Simon agreed that the only time the police officers took issue with the location of the occupiers on September 5 was when they were in the sandy parking lot. However, Mr. Simon was critical of the OPP’s response. As he said at the hearings, “[I]t’s quite a way to take issue ... to drive into a table somebody’s sitting on.” At no time that night did the police tell the occupiers they would be safe if they stayed inside the park behind the fence. Aboriginal witnesses described the police conduct as inappropriate, aggressive, and intimidating. In their view the police, not the occupiers, had initiated this confrontation.

There were inconsistencies between the evidence of Constable Whelan and other police officers, as well as between Constable Whelan’s testimony and his notes. According to Constable Whelan’s police notes, the “Natives” threw a picnic table onto his car, denting the hood and right side of the cruiser. Constable Whelan also said the picnic tables were “stacked” about four tables high. When Constable Whelan testified at the Inquiry, he said that as he pushed the tables with his cruiser, a picnic table fell onto the hood of his car. Significantly, both Constable Whelan’s incident report and police notes fail to state that he pushed the picnic tables with his cruiser.

Constables Gransden and Dougan walked into the sandy parking lot. Constable Gransden had his wooden baton in his hands. All the officers wore grey tactical uniforms and caps. About eight OPP officers were at the site.

Constable Gransden stood near the fence line, talking to some Aboriginal people. Constable Gransden told the occupiers the parking lot was not part of the provincial park, and he warned them that they were committing the crime of mischief by erecting barricades in the sandy parking lot.



The First Nations people yelled profanities and told the officers “to leave” the site. Aboriginal people were screaming at the officers and the officers were yelling back.

### 10.23 Police Make Threatening Remarks to Dudley George

The officers were separated from the occupiers by the fence. According to the Aboriginal witnesses, an officer hit the fence post with his baton and said, “[W]e want to try these out.”

According to the Aboriginal witnesses, the police were taunting the occupiers and encouraging them to climb over the fence. Marlin Simon said, “[T]hey wanted us to come on the other side of the fence so that ... maybe they could arrest us or ... lay a [beating] on us. They wanted to pick a fight right away.”

Aboriginal witnesses testified that several OPP officers made racist comments, including “wagon burners” and “wahoos.” As Kevin Simon said at the hearings, the police made “degrading references to our ancestry.” He believed the OPP were there for a fight: “They came there bashing their clubs and calling names.” Other Aboriginal men, such as David George, Charles George, and Isaac Doxtator, also believed the police were instigating a physical confrontation with the occupiers. They felt threatened by the police officers’ gestures and comments.

One officer, according to the occupiers, did most of the talking. He had light hair, light-coloured eyes, was stocky, relatively short, and had facial hair. This officer said, “Welcome to Canada.” David George said:

... [H]e was basically telling me that I’m not a Canadian ... but I don’t like saying I’m a Canadian anyways, because of what Canada’s done to our people. And so he was just taking a stab at us ... [H]e was trying to tell me, “That’s Canada on that side of the line and this is Aazhoo-dena.” ... And he wanted me to step outside the line so he can give me a Canadian beating ...

David George said this officer looked over the crowd of people and, pointing right at Dudley, said, “Come on out, Dudley. You’re going to be first.”

Marlin Simon immediately picked up sand from the ground and threw it in the officer’s face. An OPP officer beside him pulled out a can of pepper spray and sprayed it at the First Nations people behind the fence. Several occupiers responded by throwing rocks at the officers, and the OPP left the area.

Constable Gransden testified that “someone in the darkness ... threw a handful of sand and gravel directly” at him. Constable Gransden used his pepper spray and thinks it made contact with a First Nations person.

The OPP moved away from the fence and backed out of the sandy parking lot. As the officers began to dismantle the barricade of picnic tables, they were “pelted with rocks.” The officers decided to leave the area and returned to their cruisers.

As Constable Gransden stood on the passenger side of his car, a rock hit his cruiser and shattered the windshield. The size of the rock and the force with which it was thrown caused Constable Gransden and other officers to be concerned for their safety. Constable Gransden and his partner Mike Dougan returned to Checkpoint “A” a few minutes before 11:00 p.m.

Constable Gransden denied making the statement “Welcome to Canada” to the First Nations people. He also claimed that he did not hear any officer make a threat to the effect of “Come on here, Dudley. You’re going to be the first.” Constable Whelan insisted he did not say, “Welcome to Canada” to the occupiers, nor did he hear any officer threaten “Dudley, you’ll be first.”

Constable Gransden maintained he was justified in discharging his pepper spray as he had been assaulted in the face by sand and gravel. While he claimed he did not use the pepper spray in retaliation, he agreed it was not necessary for him to use the pepper spray to retreat or move away from the First Nations people.

Dudley George told his sister Carolyn after the incident that he had been singled out by a police officer who told him they would “get him first.” Carolyn George testified:

He told me the police said they were gonna get him first ... but he said it kind of jokingly, like he didn’t want to take it serious. He didn’t want to believe that ...

Carolyn George said that although Dudley “was kind of sad ... he tried to make light of it.” While Carolyn did not believe the police would carry out their threat, she thought the officer’s words were meant “to harass us, and intimidate ... and scare him.” Her brother Dudley hoped they were “just joking around.”

Kevin Simon was very disturbed by the OPP’s comments to Dudley George. He said that from the time Dudley had moved onto the military ranges in 1993, he had been subjected to harassment by the military police. Late at night, the police would drive to Dudley’s trailer, shine spotlights, turn on their siren, and make derogatory remarks. Kevin Simon had been in Dudley’s trailer and witnessed some of these events. Given this history, it worried Kevin Simon on the night on September 5 that the police had targeted and threatened Dudley George. Kevin Simon said:



... [I]t had disturbed me what they had said to Dudley, and knowing that they had pointed that out before when we were living on the ranges. He was subject to a lot of harassment from the police driving by with their spotlights and sirens ... And the Army MPs ... always recognize[d] him, called him by name. So when these police had marched up the way they did, banging their clubs and pointing him out specifically amongst all of these other people in the dark, it worried me.

Kevin Simon stayed up late, thinking about the altercations with the police that evening. He was anxious and he decided not to go to work the following day.

The evening's events had an impact on other occupiers at Ipperwash Park. Marlin Simon was "angry and kind of shocked" that the police would "come right up and threaten us and Dudley like that." As Marlin Simon said, "it was mostly that evening that everything happened and everybody was kind of getting ... worried."

Inspector Linton was on duty when the picnic table incident occurred. Inspector Carson and A/D/S/Sgt. Wright had left the command post by this time.

As discussed in Chapter 11, when Inspector Carson returned to duty the following morning, he was told that officers at the checkpoint at the trailer park on Army Camp Road saw a fire on the roadway at the entrance to the park and went to check it out. Inspector Carson knew pepper spray had been used at this incident, but he did not know an officer had used his police cruiser to push a picnic table toward the park until he began to prepare his testimony for the Inquiry. As mentioned, this information was noticeably absent from Constable Whelan's incident report and the general occurrence report, and the Incident Commander was consequently unaware in September 1995 of Constable Whelan's actions.

## **10.24 Aggressive and Culturally Insensitive Remarks by OPP Officers**

Sergeant Korosec was sleeping at a hotel in Forest when his pager went off at about 11:30 p.m. He contacted the command post and Constable Jacklin informed him that the Aboriginal occupiers had thrown rocks at the OPP and damaged the windshields and hoods of police cruisers. Constable Jacklin explained that OPP officers had noticed a fire near the main gate of the park, and they "got pelted" when they went to "check it out." The following exchange took place between Sergeant Korosec and Constable Jacklin:

KOROSEC: Yeah. *They were baited.*

JACKLIN: Yup.

KOROSEC: Well, live and learn, live and learn. This — *their day will fucking come.*

JACKLIN: Yeah.

KOROSEC: *I was talking to Mark Wright tonight.*

JACKLIN: Hm-mmm.

KOROSEC: *We want to amass a fucking army.*

JACKLIN: Hm-mmm.

KOROSEC: *A real fucking army and do this — do these fuckers big time. But I don't want to talk about it because I'll get all hyped up.*

JACKLIN: And you won't be able to sleep.

KOROSEC: *And I won't be able to sleep. Okay.* What time is it? Quarter to twelve. Okay.

JACKLIN: Back to bed.

KOROSEC: Steady up.

JACKLIN: Okay.

KOROSEC: Fine.

Jacklin: Have a good night. (emphasis added)

Mark Wright claimed he had no recollection of speaking to Sergeant Korosec before he went off duty that evening. Sergeant Korosec also said that he did not remember discussing “amassing an army” to deal with the occupiers, or to “do these fuckers big time” with A/D/S/Sgt. Wright. Sergeant Korosec explained that he was awakened at the hotel in Forest, he was exhausted and grumpy from having had very little sleep over the previous two days, and he was upset to learn that fellow officers had been “assaulted with boulders with enough force or size that broke windshields. I was thinking, what [would have] happened if it hit one of them in the head?” As was the case with Inspector Carson, Sergeant Korosec was not told Constable Whelan had pushed the picnic tables with his police cruiser until the Inquiry ten years later.

Sergeant Korosec knew his remarks were inappropriate and that his language was aggressive and confrontational: “It bothers me to hear this tape ... even though it's my voice, it's not me,” he said at the Inquiry. Although Mark Wright claimed he had no recollection of discussing with Sergeant Korosec “amassing an army” to move on the occupiers, Wright testified that some of the language used by Sergeant Korosec was “an unfortunate use of terminology.”



Sergeant Korosec had made other questionable remarks earlier that evening when he gave instructions to Constable Burch regarding the police boat, the *HH Graham*. When Constable Burch asked what kind of armaments the occupiers had, Sergeant Korosec replied, “They’re Natives. They all got long guns.” He continued:

There’s some intelligence or some — I shouldn’t even say intelligence — some word they got AK-47s or whatnot, rifles and everything. Hasn’t been confirmed at all ... In fact, we’ve never ... even yesterday when it hit the fan, been confronted by a Native holding a long gun. And he’d probably be a dead Native by now.

When asked to explain these comments at the Inquiry, Sergeant Korosec replied that Aboriginal people are hunters and have rifles. He said “dead Native” referred to the incident on the beach on the afternoon of September 4 with Roderick George when Constable Whelan said he saw the butt of a long gun in the car trunk of an Aboriginal person. Sergeant Korosec agreed that the statement “They all got long guns” was a “generalization” and not reflective of what all the occupiers had in the army camp.

Stan Korosec was an OPP Sergeant with responsibility for coordinating the ERT teams. He was in the command post with Incident Commander Carson during the September 5 and 6 Ipperwash occupation. He was a role model for the ERT officers. Yet the language he used was insensitive and aggressive. It reinforced negative stereotypes of Aboriginal people, and certainly was not respectful of the First Nations people. This clearly was not an appropriate role model for OPP Constables and other officers involved in the Ipperwash occupation. It was not conducive to establishing a trust relationship between the police and the First Nations people. Nor did it foster the objectives of Project Maple, which were to resolve the occupation through negotiation and by peaceful means.

Sergeant Huntley also made inappropriate and culturally insensitive remarks in conversations on September 5. While speaking to the police sergeant responsible for the OPP’s Marine Unit, Sergeant Huntley discussed his accumulated overtime hours. When asked what he was going to do with all this money, Sergeant Huntley replied, “[G]ive it to the government ... so that they can give the Indians more stuff. Like you know, all this stuff we keep giving them doesn’t come cheap. Somebody’s got to pay for it.”

When asked about the Ipperwash situation in a later call with OPP Dispatch, Sergeant Rob Huntley said:

RH: ... I'm in the Command Post. I'm in the dark here.

L: Oh, I just thought it was kind of straightforward. They'd get the stuff back. We'd have to give it to them. The buildings and everything.

RH: *And we just pay more taxes so that we could afford to build houses on it for them.*

L: Oh, come on ... Now we're going to give to them with houses?

RH: *Yeah. Don't you think that's right? Because you and I stole that land from them?* (emphasis added)

Sergeant Huntley claimed he did not recall either of these conversations and was "quite shocked it was me saying it." He acknowledged that his statements were "unfair" and "unprofessional."

Sergeant Huntley made sarcastic and derogatory remarks about First Nations people. Again an OPP Sergeant's comments promoted negative stereotyping of Aboriginal people, a clear barrier to initiating respectful dialogue and to resolving the occupation by peaceful means.

Another culturally insensitive, racist, and egregious conversation took place between Detective Constable Whitehead and Detective Constable Dyke on September 5, 1995, at approximately 1:43 p.m. John Carson identified Speaker 1 as Dyke and Speaker 2 as Whitehead:

SPEAKER 1: No, there's no one down there. *Just a big, fat fuck Indian.*

SPEAKER 2: The camera's rolling.

SPEAKER 1: Yeah. *We had this plan, you know. We thought if we could ... five or six cases of Labatt's 50, we could bait them.*

SPEAKER 2: Yeah.

SPEAKER 1: *And we'd have this big net at a pit.*

SPEAKER 2: *Creative thinking.*

SPEAKER 1: *Works in the south with watermelon.* (emphasis added)

These comments were made regarding the Aboriginal people who were under surveillance by these officers, as well as people of colour.

Inspector Carson described the comments as "inappropriate," "unacceptable," and "not to be tolerated." He considered the statements to be racist.



A recording of comments by Detective Constable Whitehead and Detective Constable Dyke came to the OPP's attention after the events occurred at Ipperwash in September 1995.<sup>3</sup> The recording was made while the officers were working undercover on September 5, 1995. Detective Sergeant Bell had assigned these officers the task of photographing the people occupying the park.

Detective Constable Whitehead was disciplined for his failure to respond and to report Constable Dyke's comments. This is discussed in Chapter 20. Detective Constable Dyke was retired at the time of the complaint and was not disciplined.

Jim Dyke and Darryl Whitehead were members of the Project Maple intelligence team. It is fundamental that police officers who are involved in intelligence are impartial and free of bias as they process and filter sensitive and critical information.

Detective Sergeant Bell testified that he was surprised an officer made these derogatory remarks. He agreed that in order to do proper analysis, it is "imperative" that police officers involved in intelligence approach their jobs without any bias. He agreed that racism is one of the most serious forms of bias that undermines the credibility of intelligence functions.

Detective Sergeant Bell agreed that the statements made by Officers Dyke and Whitehead were completely inconsistent with their role as intelligence officers. Attitudes such as these could affect the information analyzed and processed between September 4 and 6, 1995, by intelligence officers at Ipperwash and transmitted to the Incident Commander. Such comments confirmed that the police officers did not respect First Nations people. These types of statements did not promote a trust relationship between the Aboriginal occupiers and the police. Such attitudes and comments had a detrimental effect on the ability of the police to communicate with the occupiers and to negotiate a peaceful solution in accordance with the objective of Project Maple.

## 10.25 Reports of Gunfire

About an hour after the picnic table incident, Constable Larry Parks was on duty at Checkpoint "C" on Army Camp Road. Suddenly, at about 11:40 p.m., the stillness of the night was interrupted by "bursts" of "gunfire" from the direction of the beach at the army camp, about a kilometre from the checkpoint. Constable Parks heard a "large amount of gunfire," perhaps fifty to one hundred rounds, which he thought was fired from one weapon. He immediately contacted the

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3 Detective Constable Dew and Detective Sergeant Richardson discovered the comments while copying the tape pursuant to a Freedom of Information request.

Tactical Operations Centre (Lima 2) at the MNR parking lot and reported: “We’re hearing large amounts of automatic gunfire way back in the army base.”

A second radio transmission occurred four minutes later. On Inspector Linton’s instructions, Constable Wayde Jacklin (Lima 1 at the command post) asked Constable Parks to confirm his report of “automatic” gunfire:

WJ: Yeah. Larry, the weapon fire you’re hearing is it — does it sound like a rifle, automatic fire?

LP: That’s 10-4.

WJ: Is that shotgun, automatic, or semi-automatic?

LP: It sounded fully automatic.

WJ: How many rounds would you figure you heard?

LP: 50 to 100 anyhow. It’s stopped now.

WJ: Sound just like one firearm going off?

LP: That’s 10-4.

WJ: Yeah. 10-4.

Constable Jacklin was assigned to Incident Commander Linton at the command post throughout the night of September 5. His role was to collect and convey information at the direction of the Incident Commander through radio and telephone communications. He remained in the command trailer in the Forest Detachment parking lot with Inspector Linton and a scribe. Sergeant Korosec was the ERT Team Leader at Ipperwash and Wayde Jacklin was the second in command.

Constable Jacklin relayed Constable Parks’ information of the fifty to one hundred rounds of automatic gunfire to Inspector Linton. This large amount of automatic gunfire concerned Constable Jacklin. With both his military and police background, Jacklin assumed the weapon was “belt-fed or drum-fed or there had to have been more than one weapon being fired.”

Constable Parks was convinced it was automatic gunfire. From his ERT training and working near the army camp for twenty years, he recognized the “sharp, crisp sound” and the “uniform” “repetition” of automatic gunfire. Although he had no particular training in automatic weapons, he had fired automatic weapons in the late 1970s at an OPP demonstration at the army camp.

Constable Parks had not observed an automatic weapon in 1993 when the occupiers moved into the military range, or in the summer of 1995 when the



Aboriginal people assumed control of the army camp and then Ipperwash Park. Following the September 4, 1995, occupation, no officer had communicated to Constable Parks that they had seen an automatic weapon in the army camp or in the park.

As I discuss in the next chapter, when Inspector Carson returned to duty the following morning, Inspector Linton briefed him on the gunfire. The two OPP Inspectors were unable to determine if the shots had been fired from a semi-automatic or an automatic weapon. However, Inspector Carson did not attach great significance to the fact that an automatic weapon may have been discharged:

I'm hard-pressed to understand why anyone would be any more concerned about an automatic weapon than they are about a semi-automatic weapon because ... in the hands of the inappropriate person, they're both simply dangerous.

The civil servants and political staff who on September 6 received the information of automatic gunfire discharged on the night of September 5 attached great importance to it. It undoubtedly heightened the anxiety level amongst officials at Queen's Park. MNR park officials at Ipperwash conveyed this unverified information to their superiors.

In the next chapters, I discuss the transmission of unreliable and unauthenticated information to Ontario government bureaucrats and politicians.

Aboriginal witnesses at the Inquiry were asked whether gunshots were fired on the evening of September 5. They were asked whether they saw firearms that night or explosives of any kind, including firecrackers.

The First Nations witnesses repeatedly stressed the understanding amongst the occupiers that no guns would be brought into Ipperwash Park. Clayton George categorically stated that he did not see any firearms in the park, nor did he hear multiple rounds of gunfire on the night of September 5. Clayton George remained in the park throughout the night. Leland White, who also stayed in the park overnight, testified that he did not hear gunshots from the park or army camp.

There was similar testimony from other Aboriginal witnesses. Stewart George was in the park late on the evening of September 5 before he retired to the barracks. He did not hear gunshots that night, or anything that sounded like rounds of automatic gunfire or firecrackers. Kevin Simon was also awake until late that night. He did not see any weapons in the park or hear gunshots.

Marlin Simon was another witness who testified that there were no plans to bring guns into the park, nor were any guns stored or concealed in the park. Isaac Doxtator, who had travelled from the Oneida Reserve that day with Larry French

and others, confirmed this. Carolyn George was another person who did not hear or see firearms at the park or army camp on September 5, either during the day or night.

Clayton George testified that in September 1995, the First Nations people had guns in the army camp, which they used to hunt game and food. Nicholas Cottrelle added it was unlikely that any First Nations person was hunting in the vicinity of the park at that time as it was not hunting season.

Marlin Simon said he heard firecrackers during the evening of September 5. He explained that people had firecrackers that came in packages of fifty or one hundred from the store on Army Camp Road. It is possible, he said, to light the end of the package so that the firecrackers go off sequentially, like small quick explosives. Mr. Simon said that from a distance, it is possible to mistake the sound of the firecrackers for automatic gunfire.

Tina George initially testified that she heard gunshots either on the evening of September 4 or 5 at about midnight as she was making her way to the inland lakes. Her daughter Julie was with her. She said both Russell Jewell and Marlin Simon had been firing a gun, a “long barrel” rifle, as they were target practising. Tina gave Marlin Simon a ride to the built-up area after the target practise.

But on her second day of testimony at the Inquiry, Tina George retracted her earlier evidence and said her statements regarding gunshots fired in early September 1995 were incorrect. She was adamant that the target practise did not occur on September 4 or 5, 1995. Her recollection was poor, she said, as ten years had passed since these events. Tina George said:

I am positive that it did not happen on Monday, September 4, 1995.  
I am positive that it did not happen on Tuesday, September 5 of 1995,  
and I am positive that it did not happen on Wednesday ... and that  
it possibly happened some time after the fact when Dudley George  
was shot ... I’m certain that I did not see guns before Dudley George  
was shot.

## 10.26 Intelligence at Ipperwash

On the morning of September 5, A/D/S/Sgt. Wright suggested the intelligence logs be maintained, and Inspector Carson agreed. Despite the Incident Commander’s decision, the intelligence logs were not maintained.

Because helicopter surveillance was not possible early on September 5, and because the video cameras that had been installed at the park kiosk and maintenance building prior to the occupation were not operational until the evening, it



was decided that Detective Sergeant Bell and Detective Constable Dyke would conduct surveillance of the park area. The two officers tried to determine the number of occupiers. At about 10:45 a.m., Detective Sergeant Bell reported that nine First Nations people were in the park — men, women, and children — as well as some vehicles. There was a campfire. He also saw an ATV, a black Oldsmobile, a pickup truck, and the “OPP WHO” vehicle. Three men were at the front gate, and one of them was cutting down a pine tree. Detective Constable Dyke took photographs of these individuals to add to the biographical binder.

Most of Detective Sergeant Bell’s time on September 5 was allocated to identifying the park occupiers, the visitors to the park area, and working on the biographical binder. He agreed that OPP officers with less formal intelligence training and experience could have performed this task.

Detective Sergeant Bell did not have team meetings with Officers Dyke, Whitehead, and Richardson to coordinate their information-gathering efforts over the course of September 1 to 6.

According to the Project Maple plan, Detective Constable Dyke was designated as an analyst, but he was an analyst in title only.

In a standard operation, an Incident Commander relies on his or her intelligence team to provide a finished product in the form of raw data that has gone through the intelligence cycle. Detective Sergeant Bell agreed that under a traditional model of intelligence, all raw data flows through the intelligence unit to the Incident Commander.

In the Ipperwash operation however, raw data flowed from officers outside the intelligence unit to Inspector Carson, bypassing Detective Sergeants Richardson and Bell. As Don Bell said, there was no single filter for all raw data intelligence, and Inspector Carson was the “central repository.” Reports were generally verbal, not written.

A number of “tentacles” of information went directly to the Incident Commander and were not subject to the analysis available with one collection site. Prior to the events on the evening of September 6, Detective Sergeant Bell’s reports to the Incident Commander were generally verbal.

Between September 1 and 6, 1995, the biographical binder was the primary report from the intelligence unit.

Later in the morning on September 5, Detective Sergeant Bell compiled the binder in the OPP Forest Detachment. He also received information for his book from officers at the checkpoints.

At approximately 7:30 p.m., Detective Sergeant Richardson instructed Detective Constable Martin to travel to the Grand Bend Detachment for 9:00 p.m. to monitor the cameras that had been installed at the maintenance shed and at

the gate kiosk at the park, and to record any activities. There were technical difficulties with the telephone lines that connected the cameras to the monitors at the Grand Bend Detachment. At times, these lines were interrupted, which resulted in no signal at all and an inability to monitor those areas. Detective Constable Martin maintained an entry log of activities recorded on the tapes.

For the balance of his shift that evening, Detective Sergeant Bell continued his work on the biographical binder. He left the OPP Forest Detachment at about 10:30 p.m.

Inspector Linton led the command post meeting shortly after 9:00 p.m., which was attended by Acting Staff Sergeant Skinner, Sergeant Cousineau, Constable Jacklin, and Detective Constable Dew. Detective Constable Dew was asked to prepare folders that identified the occupiers' vulnerable points or accessibility to the park from Matheson Drive and Army Camp Road. Detective Constable Dew considered this "a task that [he] was not qualified to do." He told Inspector Linton he did not have the requisite skills to perform this work, but he was told "to go ahead anyway."

Detective Constable Dew enlisted the assistance of TRU Constable Zupancic to identify points of weakness and accessibility to the park. Mark Dew, who was "not trained in tactics ... couldn't understand why" he had been given this assignment.

Constable Zupancic prepared stills from a video, and Dew identified the gates along the boundaries to the park. He described it as a "pointless" exercise. This work was performed throughout the night of September 5 and into the early morning hours of September 6. Detective Constable Dew handed the folders with the photographs to A/D/S/Sgt. Wright and Detective Sergeant Richardson before he went off duty. Detective Constable Dew did not see these folders again, nor was he asked to engage in similar tasks.

## **10.27 Call Between Superintendent Parkin and Inspector Linton**

Inspector Linton was on night duty at the command post when he called Superintendent Parkin at his home shortly before 10:00 p.m. to provide an update. Inspector Linton said he heard "the Minister of Natural Resources was on the local news here at six o'clock saying that they wouldn't tolerate this." Inspector Linton reported that "everything's quiet" at Ipperwash. Twenty-six ERT officers (Teams 1 and 2) were on the ground, and there were four checkpoints. Linton reported that OPP officers continued to collect information on vehicles at the police checkpoints. Inspector Linton also confirmed that the MNR helicopter had arrived from Sudbury, and that Detective Constable Speck and Constable



Paul Evans had flown over Ipperwash Park. Paul Evans filmed the Ipperwash area from the helicopter. Inspector Linton also discussed Inspector Carson's attempts to obtain armoured vehicles from GM Diesel through the London Police and from the military.

Superintendent Parkin wanted to know if the videos at the kiosk and the maintenance shed were being monitored. Inspector Linton said he thought they were.

Inspector Linton also discussed his call earlier that day with Chief Bressette, who was "pretty pissed off," and had said, "this is a provincial issue now" so "you can't be hiding behind the army." Inspector Linton added, "Tom Bressette has never supported any land claim on Ipperwash Provincial Park." He also conveyed the "rumour" heard by Chief Bressette that the occupiers would "take ... over" the cottages at the end of Outer Drive either "soon or after they're finished with the park." The next target was Pinery Park.

## **10.28 Extent of the Occupation — Intentions of the Occupiers**

Aboriginal witnesses were asked at the hearings whether it was their intention in early September 1995 to assume control over areas beyond the park and the sandy parking lot. Clearly the OPP was concerned, as were municipal officials, that the First Nations people would extend the boundaries of the occupation to encompass cottage properties west of the sandy parking lot on East Parkway Drive.

Some occupiers, such as Roderick George, did not consider the cottage properties along Lake Huron on East Parkway Drive to be part of the Aboriginal land. He claimed there was no plan to take control of this area or to extend the occupation to Port Franks.

Other Aboriginal witnesses, such as Clayton George and Kevin Simon, believed the land west of the parking lot on which cottages were built rightfully belonged to the Aboriginal people. However, Mr. Simon made it clear at the hearings that it was not the occupiers' intention in September 1995 to assert control over this land. He did not feel it was just to inflict on the cottagers what his community had sustained when the government took their land:

... [O]n the map, there's a section of the Reserve where there's cottages. I heard talk go out, people saying that the police were there to protect the cottagers. We had no intention, at least, I didn't, that I know of, to harm those people. But I know a lot of our Elders, they knew what it was like to have their homes taken and weren't about to inflict that on others. We knew that that land was legally taken

[from] us, but the people that were living there, it wasn't their fault. They had paid good money for their lands too, so we wouldn't want to inflict on them what was inflicted on us.

It was Mr. Simon's view that the cottage properties were part of the Stoney Point Reserve that had been illegally sold by the government to these individuals who lived west of the sandy parking lot. However, he stated, "[O]ur issue wasn't with them, it was with the [g]overnment." He reiterated that it was not the intent of the Aboriginal people to move the occupation west of the sandy parking lot.

Kevin Simon explained that asserting control over the cottage properties would also frustrate the objectives of the occupiers in early September 1995, namely, to enter into meaningful negotiations with the government:

... I wasn't the only one that felt that we didn't want to inflict that kind of thing on other people, and we also knew that it would be a whole different situation we would be in. We wouldn't be dealing with the government ... [W]e were pushing for some sort of meaningful, I don't know, negotiation — some sort of start to reclaiming our land, and going into peoples' cottages wasn't going to do it.

Kevin Simon said, "[W]e weren't about to get into [a] personal fight with each individual landowner or homeowner ... they weren't the ones our fight was with. Our fight was with the government."

Mr. Simon said there was some discussion amongst the occupiers about recovering the cottage properties at some time in the future, but there was no plan to do so in September 1995 when the Aboriginal people occupied Ipperwash Park.

## **10.29 Reaction of Government Officials on the Night of September 5**

When politicians and senior government staff left work on September 5, they did not feel any urgency with respect to the Ipperwash Park occupation. For example, Deputy Solicitor General Todres did not think there was any urgency regarding the park occupation. From her briefings on September 5, it appeared the approach was "slow ... steady negotiations," and the Deputy Solicitor General "simply didn't think beyond that. [She] was very comfortable that that was the direction that was being taken." The Deputy Solicitor General did not have "unusual concerns about Ipperwash. So [she] left the office on the 5th as [she] would any



other day with the Solicitor General.” Similarly, the risk assessment of the Minister of Natural Resources was that the park occupation had stabilized, winterization could wait for a couple of months, and there was no risk to campers because they had been evacuated.

Premier Harris thinks he received a telephone briefing on the evening of September 5 from Deb Hutton. He was informed of the discussions that had transpired at the IMC meeting. He thought that an injunction should be sought in an expeditious manner. On the evening of September 5, the Premier was of the view that the occupation should end as soon as possible. The Premier assumed the occupation of Ipperwash Park was an escalation of events to draw attention to the frustration of the Aboriginal people who sought the return of the army camp — their former reserve — by the federal government. The Premier considered the occupation a law and order issue, not an Aboriginal issue. Premier Harris believed that the manner in which the government reacted to the Ipperwash occupation would set the tone of how the Ontario government would deal with these issues for the next four years.

SEPTEMBER 6, 1995: BEFORE 7:00 P.M.

### **11.1 Inspector Carson Learns of Picnic Table Incident and Reports of Automatic Gunfire**

When Inspector Carson arrived at the Forest Detachment after sleeping for a few hours at a nearby hotel, he learned about the picnic table incident and the reports of automatic gunfire from the previous night. Inspector Linton briefed John Carson, Mark Wright, and Stan Korosec at approximately 6:30 a.m.

Inspector Carson learned that officers at the checkpoint on Army Camp Road near the trailer park noticed a fire near the main gate to the park. When officers approached this area, “they were met with a barrage of rocks,” which damaged three cruisers. A number of picnic tables had been piled in the sandy parking lot at Army Camp Road and East Parkway Drive, blocking vehicles from accessing the area. The Incident Commander was also told officers heard “in the area of fifty to one hundred rounds of fire that appeared to be automatic gunfire” during the night. There was also activity in the park — First Nations occupiers operated a dump truck and a backhoe.

At no time was Inspector Carson told that an OPP officer had used his police cruiser to push the picnic tables stacked by the occupiers. Nor was the Incident Commander informed of the circumstances in which Constable Gransden discharged his pepper spray.

In preparation for the removal of the picnic tables from the sandy parking lot, Inspector Carson asked A/D/S/Sgt. Wright to visit the site and survey the situation. Sergeant Korosec was instructed to arrange for a helicopter to patrol the parking lot as the officers removed the picnic tables. Constable Evans, one of the officers assigned to the helicopter, was told to videotape “everything.”

A/D/S/Sgt. Wright drove with Detective Sergeant Richardson to the parking lot, counted the picnic tables, and drew a quick diagram of the area. They saw a pitched tent and a couple of First Nations people sitting around a tree.

Detective Constable Dew was responsible for compiling a list of the police vehicles damaged in the picnic table incident the previous evening. He reported that three cruisers operated by the following officers were damaged:

windshield, hood, front fenders — Officers Whelan and Japp



windshield — Officers Hall and Horzempa

windshield — Officers Bittner and Aitchison

Prior to contacting Superintendent Parkin to update him on previous night's events, Inspector Carson received a call from Ron Fox shortly after 7:15 a.m. Mr. Fox wanted current information on the Ipperwash occupation to update the office of the Solicitor General. Ron Fox would also be a participant at the Interministerial Committee (IMC) meeting that morning, which John Carson learned from Les Kobayashi was scheduled for 9:30 a.m.

Inspector Carson told Ron Fox that picnic tables had been piled outside the park and the occupiers had built fires adjacent to private property. There was a danger that the neighbouring cottages could be damaged if the picnic tables were set on fire. Inspector Carson planned to contact the Mayor of Bosanquet to inform him of the incident, and Chief Tom Bressette of the Kettle and Stony Point Band had made it clear “he wants something done.” Inspector Carson told Ron Fox the OPP planned to “deal with this table block ASAP.” He also expressed concern about officer safety.

Inspector Carson did not place any restrictions on the communication of this information by Ron Fox to government officials. However, Ron Fox considered the OPP's plan to remove the picnic tables operational information. In some cases, governments may need to receive information about police operations to determine if that information raises issues of policy for the responsible Minister and the elected government. At the same time, however, the receipt of such information can cause problems. It can lead to governmental direction of police operations or the appearance of such direction. I discuss the distinction between legitimate direction of the police with respect to policy matters and illegitimate direction with respect to operational matters in detail in the Part II report. For the purpose of this report, it is important to understand that, while the government, through the responsible Minister, can receive information about police operations and give the police broad policy direction, it should leave the implementation of that policy, including questions of timing, tactics, and the exercise of law enforcement direction in individual cases, to the expertise and discretion of the police.

Ron Fox believed the “situation was escalating.” He assumed the OPP had made it clear to the occupiers that their activities should be confined to the park and not to the sandy parking lot. But in fact this message had not been clearly communicated to the First Nations occupiers.

Shortly after this call, Inspector Carson described the First Nations “ambush” to Superintendent Parkin — the piling of picnic tables between the park fence

and the first cottage in the sandy parking lot, the fire on Army Camp Road, rocks thrown by militant occupants, and damage to windows of three police cruisers. The Ministry of Natural Resources (MNR) was arranging vehicles “to haul” away the picnic tables, and “we’ll put the helicopter up to provide the eye for cover,” explained Inspector Carson. The Emergency Response Team (ERT) night team would remain on standby to provide cover while the ERT day shift removed the picnic tables.

In this call, Superintendent Parkin raised again his concern about video and audio devices to monitor the activities of the occupiers. Inspector Carson replied that although only one video was functional, there was footage of the park and the occupiers “from the sky,” that is, from the chopper. The OPP Superintendent urged the Incident Commander to further “explore” the installation of monitoring equipment.

Superintendent Parkin also asked whether further negotiations with the occupiers had taken place. John Carson assured him “we’re going to push that a little bit today.”

At the conclusion of the call, Inspector Carson told the OPP Superintendent that Peter Sturdy from MNR was working on the affidavit for the injunction, and that Inspector Fox had been briefed on the night’s events.

## **11.2 Tactics and Rescue Unit (TRU) Leader Shares Information about Automatic Weapons with the TRU Team**

When TRU Team Leader Acting Staff Sergeant Kent Skinner arrived at the Forest Command Post in the early morning of September 6, he was briefed on the picnic tables and the fire on Army Camp Road, the rock throwing at the police, and the fifty to one hundred rounds of automatic gunfire heard overnight. These events, in his view, “raised the threat level”:

... we now had an example of violence towards police officers, the throwing of rocks and the sound of a weapons fire ...

It was confirmation that it was a good thing we were there, and it was confirmation to me that there was now a higher potential for firearms present.

Acting Staff Sergeant Skinner believed the occupiers were prepared to use firearms as “intimidation” and in an aggressive way.

Kent Skinner conveyed this information to his TRU team, who remained on standby at Pinery Park. At about 7:30 a.m., Acting Staff Sergeant Skinner made



contact with Acting Sergeant Ken Deane (“Tex”). After describing the events, Kent Skinner said: “I think the automatic weapons fire changes things around here — probably.” He added, “[O]ther people here,” such as Mark Wright, “are wanting to do things but I don’t think that will happen.” Acting Staff Sergeant Skinner explained at the hearings that Mark Wright wanted to investigate the automatic gunfire and possibly make an arrest — that was his orientation. Acting Staff Sergeant Skinner considered Inspector John Carson to be “a little more steady.”

The two TRU officers also discussed the OPP decals that would be placed on the light armoured vehicles when they arrived in Ipperwash.

Acting Sergeant Deane raised the issue of the availability of ambulances on “nighttime coverage.” Ken Deane was informed by Acting Staff Sergeant Skinner that a St. John Ambulance was stationed at the Forest Command Post. But, in fact, this vehicle was not an ambulance. Acting Staff Sergeant Skinner was also not aware that a St. John Ambulance vehicle carried different equipment and required different personnel qualifications from its attendants than a Ministry of Health ambulance.

The TRU officers also discussed Ted Slomer, a medic associated with the OPP. Ted Slomer (“Doc”) was with the TRU team in Ipperwash. He was a registered nurse with paramedic training. Ted Slomer attended OPP occurrences when requested. He was a volunteer and was not sworn in as an auxiliary OPP officer until September 8 or 9, 1995.

Ambulance operators and staff did not generally attend unsecured environments — the “inner perimeter” — or other dangerous situations. But Ted Slomer was a tactical medic trained in TRU operations, which enabled him to work inside the perimeter. He was available to deal with trauma situations where individuals required immediate medical attention. As part of his preplanning, the OPP medic would search for the nearest local medical facilities to determine the quickest route to these hospitals.

At the request of the OPP, Ted Slomer arrived in the Ipperwash area on September 6. Constable Zupancic was asked to take the medic to the St. John Ambulance trailer at the MNR parking lot. Ted Slomer helped the officers set up the Tactical Operations Centre (TOC) — the antenna, and the extension cords to provide power to the St. John Ambulance vehicle. This St. John Ambulance trailer was not being used for medical purposes but rather for a police operation. I find it surprising that health care provider Ted Slomer did not have reservations or concerns when he testified at the Inquiry that a vehicle inscribed with the words “St. John Ambulance” had been used by the police as a command post in Ipperwash. As I discuss in the following chapters, the OPP should not have used

a St. John Ambulance trailer as a command post in its tactical operation. St. John Ambulance vehicles and equipment should not be used for purposes unrelated to St. John Ambulance’s mandate and functions as an ambulance service.

### **11.3 Mayor of Bosanquet Visits OPP Command Post**

At approximately 8:15 a.m., Mayor Fred Thomas appeared at the command post to speak with Inspector Carson. The purpose of the Mayor’s visit was to convey the concerns of his community, to find out the status of the injunction, and to receive an update on events at Ipperwash Park.

Mayor Thomas wanted to ensure the OPP were patrolling Outer Drive. Inspector Carson reassured him that ERT teams were assigned to this area. He informed the Mayor that the occupiers had thrown rocks, “smash[ing] windows” out of three police cars. The community is “terrorized,” said the Mayor. Inspector Carson reassured him that the “Premier and the Solicitor General wanted to deal with this,” and that an IMC meeting would be held that morning. Mayor Thomas indicated that he had been in contact with MPP Marcel Beaubien.

Inspector Carson discussed the checkpoints and his preference that school buses not drive by the park at the intersection of Army Camp Road and East Parkway Drive. He said Chief Tom Bressette supported the OPP efforts to deal with the park occupiers.

Inspector Carson explained the differences between trespass and a court injunction. On an injunction application, the court would declare the ownership of the provincial park and make it clear to First Nations people that they had no legal authority to occupy the park. This “force of the court” would enable the OPP to charge the violators with a criminal offence if they refused to comply with the injunction. The Mayor wanted to be apprised of the status and outcome of the injunction application and he offered the Town of Bosanquet’s assistance and equipment — “we will work with you.” Inspector Carson assured the Mayor he would remain in contact.

Mayor Thomas was very concerned about his wife. He told Inspector Carson that they lived on Northville Road, that she was “home alone,” “very upset,” and did not want “officers talking to her.” Inspector Carson undertook to provide patrols and to ensure police supervisors were aware of the location of the Mayor’s residence. Constable Cossitt was one of the officers who periodically patrolled the Mayor’s residence throughout the day.

Inspector John Carson did not consider the Mayor’s appearance at the command post for a meeting to be inappropriate. On the contrary, he thought it was an important meeting from an informational perspective. “From a public



perspective,” John Carson said, it was “essential” for the Incident Commander to be aware of the local community’s anxieties and concerns.

In my view, Inspector Carson should not have permitted the Mayor or other politicians to meet with him in the command post in Forest. As I discuss in other sections of the report, although it is important for the Incident Commander to be aware of the local community’s anxieties and frustrations and for the police to keep the community informed, it is not appropriate for politicians and municipal officials to meet with the Incident Commander in the command post. Such meetings in the command post can distract Incident Commanders from their jobs. They also create the risk of actual or perceived improper political direction of the police.

It is my recommendation that the OPP appoint a buffer, a community liaison officer, to meet with local politicians and community representatives. This will ensure that the OPP Incident Commander receives important information from stakeholders, such as the concerns in the community and events taking place in the locality. In turn, the OPP can communicate information, reduce anxieties, dispel rumours, and prevent events from occurring that may exacerbate the tension and further fuel the protest. The appointment of an OPP community liaison officer has several advantages: it allows the Incident Commander to focus his or her attention on the police operation; it ensures the Incident Commander is not overburdened liaising with politicians and community representatives; and it avoids the perception, if not the reality, of political influence over operational decisions.

## 11.4 Removal of Picnic Tables

Dudley George and J.T. Cousins were sitting at a picnic table in the sandy parking lot drinking coffee in the early morning of September 6. The fourteen-year-old had stayed awake with Dudley George through the night.

At 8:40 a.m., OPP officers arrived at the sandy parking lot in their cruisers to remove the picnic tables. The officers had been briefed at 7:30 a.m. by Sergeant Korosec. ERT Team 1 carried shields as protection from rocks that might be thrown by the occupiers. The role of ERT Team 1 was to provide coverage, while ERT Team 2 physically removed the picnic tables from the sandy parking lot.

The purpose of involving ERTs was to ensure the police operation was carried out safely and efficiently. A large number of ERT officers were sent for two reasons: (1) to expedite the pace of the operation, namely the loading and removal of over twenty picnic tables; and (2) to reduce the probability that a problem would arise.

J.T. Cousins was frightened when he saw the ERT officers approach that morning. “All of a sudden,” testified J.T. Cousins, police arrived “real fast” from

both Army Camp Road and East Parkway Drive and moved toward the parking lot. They carried “assault rifles,” and “sniper guns with great big scopes.” The officers pointed their guns in the direction of the park:

I was scared and I was ... about ready to take off and head into the woods — bushes. Then Dudley told me, “Don’t be scared. They can’t do nothing. This is our land.”

The officers at the intersection of Army Camp Road and East Parkway Drive saw twenty-one picnic tables from Ipperwash Park arranged in a circle in the sandy parking lot around a fire. A tent was pitched near the fire. The picnic tables obstructed access to the beach. They saw two Aboriginal males seated on a picnic table, one of whom officers recognized as Dudley George, who was dressed in a blue shirt. The other Aboriginal person wore an MNR jacket. Some of the OPP officers thought this person was Stewart George (“Worm”) or David George but, in fact, it was J.T. Cousins.

Dudley George told J.T. to wake people in the army camp and ask them to come quickly to the park.

As Constable Parks and other ERT officers approached the picnic tables, Dudley George and J.T. Cousins ran toward the fence, deep inside the boundaries of Ipperwash Park.

The fourteen-year-old jumped onto Marlin Simon’s four-wheeler and rode to the maintenance shed and woke Russell Jewell. With Mr. Jewell, he went to the barracks to recruit fellow occupiers.

Isaac Doxtator, asleep in the built-up area, heard the door slam at the opposite end of the long, narrow barracks building and then someone’s steps running toward him. J.T. told Isaac Doxtator to go to the park as Dudley was alone and the police were threatening him. At about the same time, Robert Isaac pounded on the door of Roderick George’s home and conveyed a similar message. Roderick’s wife, Gina, testified at the hearings that only a couple of “our” people had been at the picnic table area “that night.” They had been “sitting around the fire and kind of keeping a vigil.”

Constable Sam Poole, one of the officers whose role was to provide “cover,” stood with his “Mini Ruger” gun drawn at the edge of the provincial park, “scanning ... for any potential threats.” ERT Leader Rob Huntley had instructed some officers to carry their .223 calibre Mini Ruger rifles.

In the cottage next to the sandy parking lot, Fran Hannahson saw through her window an OPP officer “with his rifle posed.”

I understand that three OPP cars had been damaged by rocks thrown by the occupiers the previous day. But in my view, drawing their guns and scanning the



area with their weapons was unnecessary. Dudley George and a fourteen-year-old boy were simply drinking coffee when the police arrived to remove the picnic tables. They did not have any weapons, and they ran into the park as soon as they saw the police approach. The OPP did not encounter any resistance to the removal of the picnic tables. The manner in which the police carried out this operation undoubtedly contributed to the tension and escalated events at Ipperwash Park.

The ERT officers, assisted by MNR staff, proceeded to load the picnic tables onto an MNR trailer. A helicopter hovered over the area. Sergeant Korosec, on Inspector Carson's instructions, had arranged for a helicopter to patrol and "keep an eye" on the removal of picnic tables. Detective Constable Mark Dew was one of the officers who took off in a helicopter stationed near the OPP detachment with an MNR pilot. A video was taken.

First Nations people did not enter the sandy parking lot during the removal of the picnic tables, which were then transported to the MNR parking lot off East Parkway Drive. The picnic table removal was uneventful and complete by 9:05 a.m.

By the time First Nations men such as Roderick George, Gabriel Doxtator, David George, and Marlin Simon arrived at the park, the police had left and the picnic tables were gone. Dudley George told David George the OPP had chased him into the park. David George testified that Dudley recognized some of the police officers and mentioned that "the same cop that threatened him the day before ... told him again," words to the effect of "You're dead, Dudley." Gabriel Doxtator also testified that Dudley George told him that the OPP had threatened that Dudley "was going to get it" — the police "just didn't like him." Isaac Doxtator similarly testified that Dudley George also conveyed such comments to him.

The Aboriginal occupiers considered the OPP's actions in removing the picnic tables from the sandy parking lot on the morning of September 6, as well as the perceived increase in police presence in Ipperwash later that day, an escalation of events.

A warrant for Dudley George's arrest was issued after the removal of the picnic tables. He was charged with possession of stolen property (the picnic tables) and mischief. Mr. George's name was entered on CPIC, the national police information system.

Inspector Carson considered the sandy parking lot "a very different issue" than the provincial park. The park was "under the ownership of the Ministry of Natural Resources," which was in the process of obtaining an injunction. It was the OPP's position that the sandy parking lot was "township or county property ... a separate issue altogether." The OPP had taken "steps to remove the picnic tables" "with the intention or hope of sending the message that activity out there, and particularly blocking that area off, would be addressed" by the police. Inspector

Carson believed the OPP had made it clear to First Nations people that they were to remain in the park and not engage in activity in the sandy parking lot:

... The [OPP] view was, as long as the occupiers stayed in the park, the process would be proceed with the injunction, stay the course, just maintain the security in the area and, for lack of a better term, it's kind of business as usual.

The parking lot was a separate issue. I believe we made the point in regards to the picnic tables earlier in the day, that we weren't prepared to allow activity, criminal activity in particular ... It would [be] an untenable situation, [given] its proximity to the cottages and the information we had received up to that point about the cottages being next.

Inspector Carson believed the OPP's actions in removing the picnic tables from the parking lot on the morning of September 6 indicated to the First Nations occupiers that the police would not enter the provincial park. But in fact this important message had not been clearly communicated to the occupiers.

Roderick George and other occupiers were unaware of any "rule" that, as long as First Nations people remained behind the fence within the park boundaries, there would be no confrontation with the police.

Inspector Carson and the other OPP officers did not think about using a bullhorn that morning to communicate this message. Nor did they resort to any other methods to impart this critical message to the First Nations occupiers. Removing the tables in the sandy parking lot was a very subtle, indirect, and ineffective way of informing the occupiers not to move beyond the park boundaries. Also, the Aboriginal people were not told the OPP had no intentions of entering the provincial park. I do not agree with Inspector Carson that the OPP conveyed these important messages to the occupiers. This was clearly a failure in communication, and it undoubtedly contributed to the tension.

Sergeant Huntley was one of the officers involved in the removal of the picnic tables. Shortly after the OPP completed this assignment, Fran Hannahson, who had been in her cottage with her grandson, approached this OPP officer. She was concerned about the park occupation and their safety. She had also seen First Nations people throw rocks at the police the previous evening.

As a result of this discussion, Sergeant Huntley decided to move Checkpoint "A" (Alpha) to the corner of Army Camp Road and East Parkway Drive. This checkpoint was now essentially located at the base of Mrs. Hannahson's driveway.

Later that morning, Sergeant Korosec was instructed to find out whether the officers involved in the picnic table removal drew their guns. In a call with Lima



2 at TOC, he learned that about ten ERT officers were “keeping an eye with the long guns” drawn while the picnic tables were loaded onto the MNR trailer. It was explained this was for the protection of the officers. Sergeant Korosec made it clear to Lima 2, “where guns are drawn that you hear about, give us a call here and let us know.”

A regulation pursuant to the *Police Services Act* stipulates that officers must file a use of force report when they draw a handgun, regardless of whether a shot is fired. I find it surprising that there is no similar requirement for OPP officers to file a use of force report for long guns (rifles). In my view, there should be the same requirement for long guns. When OPP Commissioner Gwen Boniface testified at the Inquiry, she was receptive to the proposal that use of force reports be required for long guns. She agreed this would help monitor the appropriate use of rifles and other long guns by members of the police force.

## **11.5 Continued Attempts to Obtain Armoured Vehicles and Other Equipment**

Inspector Carson continued his efforts to obtain military vehicles for the safety of his officers on September 6. Shortly after he came on duty that morning, he instructed Acting Staff Sergeant Kent Skinner to obtain police decals for the light armoured vehicles (LAVs) “if and when they arrive.” Kent Skinner spent “a fair bit of time on the phone” hunting for decals when he was at the command post that morning. On both September 5 and 6, a significant and, in my view, an inordinate amount of time and effort was spent by the Incident Commander and other OPP officers on these military vehicles, weapons, and other equipment. The Incident Commander himself spent too much time on logistical matters, which took valuable time away from important issues such as speaking to a negotiator who offered to assist in the occupation, determining ways in which the OPP could communicate their intention to the First Nations people, and focusing on intelligence to ensure that information received was verified before critical decisions were made by the Incident Commander.

Inspector Carson discussed with members of his command team on the morning of September 6 the availability of equipment for the protection of his officers. He asked Acting Staff Sergeant Skinner whether the TRU had large canisters of pepper spray. Acting Sergeant Deane reported later that morning that TRU had five pepper spray “foggers.” Kent Skinner instructed one “fogger” be given to the ERT team.

Inspector Carson also wanted ASP batons for all his officers. The OPP at that time was transitioning from a 26-inch wooden baton to a collapsible metal ASP baton of the same length. The new baton collapsed to 6 or 7 inches and was

easier to carry on an officer's belt. The wooden batons were "cumbersome," and as a result were often left in police vehicles instead of being worn on the officer's belt. John Carson explained:

... [W]hen you're trying to get in and out of vehicles, it's getting caught and it's hanging down the side of your leg and it's just a real aggravation to carry. So what we had done in our patrol vehicles is we had placed baton holders on the inside of both front doors. And unfortunately what ends up happening is most of the time ..., when they [officers] need the baton, it's in the holder in the front door and not on their belt where it's needed.

Inspector Carson wanted the sixty ERT officers to carry the ASP batons on their belts at all times. This was new equipment, and training for some of the officers was required on how to open, close, and carry the metal baton. The ASP batons were distributed to the officers that evening.

Additional rifles and shotguns were also sent to Forest by Inspector Robertson from General Headquarters in Orillia.

Helicopter surveillance was also important to Inspector Carson. He wanted the "choppers" surveying the park and aerial videos of the entrance to each park building and possible barricade locations.

Inspector Carson wanted OPP officers patrolling the beach area in all-terrain vehicles (ATVs). It was announced at the command team briefing at about 10:20 a.m. that ATVs would be arriving in Forest and that Sergeant Korosec would arrange patrols of the beach. The canine unit was on its way and would be stationed at the bunkhouse in Pinery Park with the TRU team. Maps demarcating Mayor Thomas's residence were circulated to the command team and to the Grand Bend Detachment to ensure officers patrolled his home.

Listening devices were not activated before September 6. The OPP were only able to establish a connection to the telephone in the maintenance shack.

A topic repeatedly raised by Superintendent Parkin with Incident Commanders Carson and Linton was the importance of video surveillance. The operation and effectiveness of this important means of intelligence was a subject of discussion by the OPP Superintendent leading up to the critical incident on the night of September 6. As Superintendent Parkin testified: "There was enough discussion and rumour around that it might take place on the Labour Day weekend." And "with that information in our minds, it was [incumbent] on us as a police agency to do everything that we could to show that we were prepared if in fact it took place":

There was probably nothing better that we could have had than video at strategic locations to allow us to know on a timely basis what was



taking place. It would assist us in our planning as far as trying to resolve this issue and for the safety of everyone involved.

Chief Superintendent Coles was also concerned. When he drove to the Ipperwash area on September 6 with Superintendent Parkin, he was worried about the lack of power and “clearly ... wanted more video.” As Superintendent Parkin said in his testimony, “this became a little bit of an issue as time went by into getting it done on a[s] timely [a] basis as we had hoped for.” “It was something that we felt hadn’t been done quickly enough.”

Inspector Carson’s superiors had hoped the technology issues would have been resolved before September 4, and that there would be more extensive video surveillance in different locations in and around Ipperwash Provincial Park.

## **11.6 Is the Telephone Line Recorded?**

By 9:45 a.m., Inspector Carson assumed that his telephone line at the command post was unrecorded. In a call to the OPP West Region Headquarters, Inspector Carson explained that he “had one line deprogrammed so” he “could talk freely ... [b]ecause anything in the Command Post goes through the logger.” Inspector Carson assured Superintendent Parkin in a call a few minutes later that “this line I call you on now has been changed” — “it’s no longer recorded ... so we don’t have to worry about that.” But, unbeknownst to these senior OPP officers, their telephone conversations continued to be recorded on this line.

In my view, it is important that communications from and to the command post be recorded during a police operation. As I discuss in this report, recording of telephone calls and other communications at the command post ensures transparency and accountability in police decision making. It also provides valuable information to the OPP in its post-incident analysis of the police operation as well as for other bodies that may be involved in reviewing the incident. The request for an unrecorded line should not have been made at Ipperwash. The OPP should take measures to ensure that all telephone lines in the command post are recorded and stored permanently. Recording helps ensure transparency and accountability, which, as discussed in detail in the Part II report, are core values that should inform police operations and police–government relations.

## **11.7 Contact with Inspector Hutchinson in Gustafsen Lake**

John Carson also had contact with OPP Inspector Hutchinson in British Columbia that morning. The call was at approximately 10:44 a.m. The two OPP inspectors shared information on equipment and events in the respective First Nations protests.

Inspector Carson described the “ambush” in the sandy parking lot during the picnic table incident — ERT officers were bombarded with rocks and boulders, and three police cars were damaged. He explained that when thirty officers and cruisers rolled into the sandy parking lot, the two Aboriginal people who were there ran over the fence into the park, and the OPP “scooped” the picnic tables — “so we kind of made a point that there is a line in the sand here.”

As mentioned, Inspector Carson believed that, by removing the tables from the sandy parking lot, the police had conveyed the message to the First Nations people that they must remain in the park, and if they complied, the OPP would not bother them. But no such words were in fact communicated to the occupiers. I do not frankly understand how the First Nations people could understand this message simply by the “scooping” of picnic tables by the OPP in the sandy parking lot. This was clearly a failure in communication by the police. And although the OPP had several opportunities during the day to rectify the situation, the police failed to directly communicate this essential message either orally, in writing, or by some other effective means. A series of misunderstandings ensued that culminated that night in a police confrontation with the First Nations occupiers.

The Incident Commander explained to Inspector Hutchinson that he was trying to arrange for the transportation of “two military Bisons” (LAVs) as well as training on these vehicles at Meaford for four of his officers. These vehicles were being used in the First Nations dispute at Gustafsen Lake, British Columbia. Inspector Carson made it clear that the LAVs would be identified as police vehicles; the OPP wanted to “distance” itself from the military.

In a call to Inspector Hutchinson that afternoon, Inspector Carson made it clear the LAVs would be used only in an emergency situation to rescue OPP officers, not to patrol the Ipperwash area. They discussed the obstacles in obtaining and using the military vehicles. Inspector Carson also alerted Inspector Hutchinson to the political pressures in Ontario: “we’ve had some alligators” — “some political pressures.” He also mentioned the MNR injunction application scheduled for the following morning in Sarnia.

Inspector Carson was concerned that there was a connection between Gustafsen Lake and events at Ipperwash. Both were land claim issues, but the First Nations people in British Columbia had arms. At no time did the OPP see firearms of any kind in the possession of the occupiers at Ipperwash Park. The Aboriginal people in southwestern Ontario were engaging in a peaceful occupation.

## **11.8 Missed Opportunities in Intelligence Gathering**

When Detective Sergeant Richardson returned to the OPP Forest Detachment that morning at 6:45 a.m., Detective Constable Dew advised him that four



police cruisers had been damaged by rocks the previous evening, automatic gunfire had been heard in the camp, and that picnic tables were stacked in the sandy parking lot at the curve of Army Camp Road and East Parkway Drive.

Detective Sergeant Richardson considered these incidents to be significant. The damaged police cruisers constituted mischief. Automatic weapons, he said, are not used for hunting; they are “prohibited weapons” — “there’s really only one use for those type of weapons and that’s to hurt people.” And the stacked picnic tables prevented people from accessing public property, posed a possible traffic hazard, and also constituted mischief to property. Despite these concerns, Detective Sergeant Richardson did not ask any members of his team to investigate these incidents, and, in particular, the report of automatic gunfire.

When Detective Sergeant Don Bell, who was a member of the intelligence team, arrived at the Forest Detachment early that morning, Detective Sergeant Richardson briefed him on the automatic gunfire heard overnight on the base, and the damage to windows of four police vehicles caused by rocks thrown by the occupiers. Detective Sergeant Bell was not instructed to verify the report of automatic gunfire.

Instead, Detective Sergeant Bell, who was on duty from 7:00 a.m., resumed his work on the profile books, identifying First Nations people from photographs. The purpose of compiling these books was to identify occupiers in the park, and to provide officers who might arrest these individuals with information such as whether these people had previously been involved in assaults and/or resisted arrest. Don Bell did not spend time in the September 4 to 6 period on strategic intelligence, that is, providing information to the Incident Commander on possible future actions of the occupiers. Nor did the intelligence officers spend adequate time verifying reports of information on the activities of the occupiers. This becomes very apparent as the day progresses. And as I discuss in detail, the Incident Commanders and other OPP officers made important decisions at Ipperwash that evening based on incorrect and unverified information.

Don Bell participated in a command post briefing at about 10:15 a.m. He relayed information that some violent people might be involved in the park occupation. Inspector Carson instructed Detective Sergeant Bell to continue collecting information on people passing through the checkpoints.

After this meeting, Vince George told Detective Sergeants Bell and Richardson that individuals from Muncey First Nation and from the U.S. were involved in the Ipperwash Park occupation. Constable George reported that Les and Russ Jewell “were stirring up everybody,” that Russ Jewell and Tina George were living in the maintenance shed, and that a vehicle from Moraviantown First Nations Territory was in the area, driven by a man thought to be involved in Oka. Detective Sergeant

Richardson considered the information that people had travelled from other areas to Ipperwash significant.

Detective Sergeant Bell followed up on this information with the OPP Windsor Intelligence Unit, and Canada Customs. It appeared to the Detective Sergeant that the Jewell brothers were “calling the shots.” Buck Doxtator and Robert Isaac, from outside the Kettle and Stony Point community, were also of concern.

Detective Sergeant Bell also spoke to Major Karl Heck at the Department of National Defence. He told him that the previous night, four police cruisers had been damaged and four arrest warrants had been issued, but no arrests had been made. Don Bell identified an individual from Walpole Island who was violent. He also informed Major Heck that the road to the beach had been blocked with picnic tables that morning, but that the occupiers had fled when the OPP approached the area. Major Heck informed Don Bell that Captain Doug Smith would be travelling to the Ipperwash area.

At a briefing at the command post led by A/D/S/Sgt. Wright at about 2:30 p.m., Detective Sergeant Bell reported that OPP Windsor Intelligence was unable to obtain information on the Jewells, such as their place of residence and whether they had criminal records. Don Bell did not provide any intelligence on the reliability of the information on automatic gunfire heard from the army base the previous night. As Don Bell testified, the “reliability” of the information about weapons “was still up in the air.” Although officers had reported hearing this gunfire on September 5, the OPP had “also heard from a source” believed “to be reliable that there weren’t any weapons in there.” Detective Sergeant Richardson also reported at the meeting that Elders at Kettle Point had stated there were no burial grounds at the park. Clearly, there was uncertainty and conflicting information regarding the report of automatic gunfire. Yet like other important information received by the police, there was no verification or authentication of this information by police intelligence officers at Ipperwash.

There was also discussion about placing cameras outside the park to monitor activity. Detective Sergeant Bell agreed to look into this. After the meeting, he and Detective Sergeant Randy Parent from the Chatham Crime Unit drove to Army Camp Road to look for power sources for surveillance cameras and monitoring equipment. The OPP wanted surveillance of both the army camp and the park. Unfortunately cameras were not installed in the sandy parking lot or other areas outside the park on September 6. Visual intelligence was inadequate in the OPP operation at Ipperwash.

Detective Sergeant Bell testified that the traditional method of collecting intelligence was not used by the OPP in the September 1995 park occupation. Verbal rather than written reports were made. Information received by the Incident



Commander was distorted by the person-to-person transmission. Detective Sergeant Bell agreed there were a number of tentacles of information coming directly to the Incident Commander that were not subject to the screening that would otherwise be available from one collection site. OPP Commissioner Gwen Boniface agreed. This continued into the evening of September 6. And as I discuss in the following chapters, the Incident Commander made critical decisions based on this inaccurate and unverified information.

At approximately 4:45 p.m., Detective Sergeants Richardson and Bell investigated a report that the “OPP WHO” vehicle had been driven erratically and was stuck in the sand at the beach at Port Franks. A number of First Nations people surrounded the vehicle, and residents in the area were concerned. When the officers arrived, they saw a Camaro parked near the beach, but no activity that warranted a criminal investigation. They explained to residents that there was a dispute involving the provincial park that would likely be settled in court, and that the OPP were monitoring the area.

Detective Sergeant Bell returned to the OPP Forest Detachment at 6:00 p.m. and continued to work on the profile books into the evening before the decision was made to deploy the Crowd Management Unit (CMU) and Tactics and Rescue Unit (TRU) to the sandy parking lot outside Ipperwash Park.

There were further missed opportunities by the OPP to verify information that made its way to the command post that evening. No one officer on the intelligence team at Ipperwash was designated with the essential role of analyzing, filtering, and verifying the information. The Incident Commander continued to receive raw information from a variety of sources. Crucial decisions made by the Incident Commanders on the night of September 6 were based on unauthenticated information. There was clearly a failing in OPP intelligence in the Ipperwash operation. Associate Chief Justice O’Connor, in his recent report on the activities of Canadian officials in relation to Maher Arar, has stressed the importance of ensuring the accuracy and reliability of information and the irreparable harm that inaccurate and unreliable information can cause to individuals.<sup>1</sup> I agree with Associate Chief Justice O’Connor about the importance of accuracy and reliability of police information. In my view, more attempts should have been made at Ipperwash to test the reliability of the information received by the OPP.

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1 Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar. Report of the Events Relating to Maher Arar — Analysis and Recommendations (Ottawa: Public Works and Government Services Canada, 2006) at 24-26, 335.

## 11.9 Captain Smith Offers His Assistance to the OPP

Captain Doug Smith from the Department of National Defence arrived at the OPP command post to speak to John Carson late in the morning of September 6, 1995. The purpose of his visit was to offer his assistance to the Incident Commander. The two men had a lengthy discussion about issues at the provincial park.

After this meeting, Captain Smith met with First Nation representatives at Kettle and Stony Point to discuss the park occupation. He also spoke with First Nations people at the army camp, mostly Aboriginal women, and discussed “the status of the base, the status of the park,” and “what could be done to possibly resolve the situation.”

After learning that Les Jewell was a leader of the park occupation, Captain Smith said he wanted to meet Mr. Jewell. Members of the Kettle and Stony Point Band offered to facilitate a meeting. Captain Smith had “a relationship with the people in the camp” — “I could just drive up and talk to them.” He had become the military liaison after the occupation of the army barracks at the end of July, and had met with the Aboriginal occupiers several times in August.

Captain Smith returned to the command post at approximately 4:15 p.m. to notify the Incident Commander that Les Jewell was “running things” at the park. Captain Smith knew the importance of opening up a line of communication with the occupiers in a leadership position in the park. He intended to meet with Mr. Jewell, possibly on Friday, September 8, and asked if the OPP wanted him to communicate anything. Inspector Carson requested that Captain Smith notify him before he spoke with the occupiers.

Inspector John Carson was aware that Captain Smith had ongoing contact with the First Nations occupiers in the built-up area of the military base. Despite the fact that the OPP had had no success in initiating a meaningful dialogue with the park occupiers, Inspector Carson did not ask Captain Smith to try to arrange a meeting with the occupiers earlier than Friday, September 8. Had the OPP Incident Commander made this request, Captain Smith would have tried to facilitate immediate communication with the park occupiers. This was another significant missed opportunity for the police to learn and understand the occupiers’ grievances and anxieties, and in turn to communicate the OPP’s intentions to the First Nations people.

Captain Smith represented the military and was from the federal government, which was involved in a land claim with regard to the army camp. The Incident Commander did not want Captain Smith’s involvement in the park occupation, nor did he want the military to communicate on behalf of the OPP. As



Inspector Carson said at the hearings, “I ... didn’t want occupiers to see ... that the OPP and the military were working together towards issues against the occupiers ... I wanted ... the appearance that the military had their business and we had our business ... I wanted the OPP to be seen as independent from the military’s issue with the occupiers.”

However, “in retrospect,” Inspector Carson believed that although it would be inappropriate to use Captain Smith as an “intermediary,” “given his role” and the position of the military and the occupiers regarding “the land claim of the military base,” he realized he could have used Captain Smith to convey information to the First Nations occupiers. The OPP Incident Commander did not consider asking Captain Smith to send the message to the occupiers that, if they remained within the park boundaries, the OPP had no intention of entering the park — “I didn’t think that through.” This was most unfortunate. Dialogue between Captain Smith and the occupiers may have helped avert the tragic events that took place that night in the confrontation that occurred between the OPP and the First Nations people. A critical missed opportunity.

### **11.10 Chief Superintendent Coles and Superintendent Parkin Visit the Command Post**

The arrival of Chief Superintendent Coles and Superintendent Parkin at the Forest Command Post on September 6 was not a surprise to Inspector Carson. He had had advance notice of their visit. Inspector Carson’s superiors wanted to show support for the OPP officers involved in the Ipperwash occupation. Superintendent Parkin testified that their presence was to “wave the flag,” “to be seen as supportive of our people”; the OPP officers were “under a very stressful situation, and as the leaders in the region, it’s important to show that support.”

Chief Superintendent Coles also wanted to know if Inspector Carson was encountering difficulties — did he have a sufficient number of officers and were there problems the Incident Commander wanted to discuss? Both Chief Superintendent Coles and Superintendent Parkin testified that their visit to the OPP Command Post was not prompted by concerns that John Carson was not handling the Ipperwash situation effectively.

When his superiors arrived, Inspector Carson asked the scribe and members of his command team to leave the command post. This was a confidential, private meeting. None of the three commissioned officers took notes and there is no written record of discussions at this meeting. In my view, the discussions between Chief Superintendent Coles, Superintendent Parkin, and Inspector Carson should have been committed to writing. A written record is essential for reasons

of transparency and accountability. It would also have averted continued speculation, suspicion, and uncertainty about what actually transpired at this meeting.

Inspector Carson had a lengthy discussion with Chief Superintendent Coles and Superintendent Parkin about the events to date at Ipperwash, about police strategies as well as issues in the community. John Carson explained that attempts to establish a dialogue with the occupiers had been unsuccessful, and he was seeking retired OPP officer Lorne Smith's assistance. (Lorne Smith had served as a liaison officer to First Nation police at Kettle Point.) Inspector Carson also discussed the challenges of obtaining an injunction. An Aboriginal man named Doxtator claimed the occupiers had automatic weapons. What John Carson had anticipated would be "a fifteen, twenty-minute meeting turned into a couple of hours."

Inspector Carson stated his plans regarding the police operation did not change as a result of this discussion with his superiors.

Chief Superintendent Coles and Superintendent Parkin drove to the Ipperwash area after the meeting. They went to TOC at the MNR parking lot and chatted with members of the Emergency Response Team and other OPP officers. They also drove to the intersection of Army Camp Road and East Parkway Drive and were told cameras had not been installed across the road from the sandy parking lot because of the unavailability of hydro.

As mentioned earlier, Chief Superintendent Coles considered the cameras an important source of intelligence — "in case something bad did happen," it was important that the events be recorded. In fact, hours later, the sandy parking lot was the site of a confrontation between the OPP and the First Nations occupiers at which Dudley George was shot. When Chief Superintendent Chris Coles testified at the hearings, he lamented the fact that cameras had not been installed at the sandy parking lot — "I wished there had been."

After Chief Superintendent Coles left the area on the afternoon of September 6, he did not have further contact with Inspector Carson, Inspector Linton, or any OPP officers before the confrontation with the First Nations people in the sandy parking lot.

### **11.11 Call between Ron Fox and Mark Wright**

Ron Fox contacted the command post at the time Inspector Carson was meeting with Chief Superintendent Coles and Superintendent Parkin. A/D/S/Sgt. Wright responded to the call as John Carson was occupied. This was the first contact between Ron Fox and A/D/S/Sgt. Wright.

Ron Fox told A/D/S/Sgt. Wright that, in preparation for the injunction application, a government lawyer from the Ministry of the Attorney General would



be contacting the OPP. He told Mark Wright that he had attended the IMC meeting that morning and wanted confirmation of particular comments made at the government meeting:

RON FOX: Can you give me a confirmation on something?

MARK WRIGHT: Sure.

RON FOX: It came up in the middle of an Aboriginal issues meeting that I was at.

MARK WRIGHT: Uhum.

RON FOX: Just recently, that apparently the media were approached by two people from the location and they had baseball bats and our people were required to take some action.

MARK WRIGHT: Well, we heard that stuff too, and they said they had tape ... and we just watched the news and that's not what happened, nor have we got any report like that at all from our people on the ground. What we — what happened was, I don't know if John told you about the picnic table episode this morning?

RON FOX: Yep.

MARK WRIGHT: Okay. So because we heard automatic fire last night out there ...

A/D/S/Sgt. Wright further explained to Ron Fox that when the OPP removed the picnic tables that morning, “two ERT teams” were on site — “one team provided cover and they had ten officers with Rugers ... at shoulder arms ... or port arms I guess it's called.” Ron Fox considered this operational information.

## **11.12 Preparations for the Injunction: Communication Between MAG Lawyer and Inspector Carson**

As they walked back to their respective offices after the IMC meeting, Ministry of the Attorney General (MAG) lawyer Tim McCabe discussed with Ron Fox what he needed from the OPP to prepare for the injunction application. Elizabeth Christie accompanied them on the walk from the Ontario Native Affairs Secretariat (ONAS) office, north on Bay Street.

Mr. McCabe required an OPP officer, knowledgeable about the events at Ipperwash, to testify at the court hearing the following day in Sarnia. He wanted

the officer to provide a narrative of events from the beginning of the park occupation on September 4, 1995. He also wanted the names of the First Nations occupiers in the provincial park. In addition, the government lawyer wanted to discuss the service of the injunction documents by the OPP on the First Nations occupiers.

At approximately 2:30 p.m., Mr. McCabe contacted Inspector Carson. This was the first time the two men communicated. Mr. McCabe explained he was expecting “confirmed instructions” later that afternoon “to seek an ex parte interlocutory injunction,” and asked if John Carson could testify at the hearing. Inspector Carson explained that his “boss,” the OPP Chief Superintendent, was “just discussing” whether he was “the most appropriate person to supply that information” — “probably my No. 2 guy” in the command post, “who is every bit as up-to-speed on the issues as I am,” could testify at the hearing in Sarnia. Inspector Carson was thinking of A/D/S/Sgt. Mark Wright. Inspector Carson agreed to fax a list of names of the park occupiers to the government lawyer.

Mr. McCabe explained that, in an injunction without notice, it was necessary to establish “some kind of urgency” that “serious consequences could occur.” He said the “reports of gunfire last night” had “gotten people particularly concerned here,” as well as “the fire ... and the alcohol.”

Inspector Carson gave his perspective of these events. Regarding the picnic table incident, he said OPP officers “got ambushed” when they went to “deal with the fire on the roadway and got bombarded with rocks which caused damage to windshields” of “three vehicles” — “fortunately no officers were hurt.” But John Carson cautioned the government lawyer not to attach too much importance to the reports of gunfire the previous night. He stressed that no weapons had been pointed at the OPP, nor had any officer been threatened by a firearm:

... I have to be frank with you. We have not had a weapon pointed at us. We haven't seen one fired in any direction, and there is no reason to believe that the firing that we heard last night was anything more than audio for our benefit ...

When you hear that there's gunfire, you can't really use that. I mean it's a significant factor, from a safety point of view from my perspective, in that I know that obviously there's weaponry in there. But to say ... our officers have been threatened with weapons, I can't say that ...

If a judge asked me specifically ... where did we see weapons or ... [were] any weapons pointed at us or [if] we felt our safety was in



jeopardy because of those weapons, we'd have to say we have not been directly threatened ...

It was important to Inspector Carson that Mr. McCabe understand the “context”; “I didn’t want him to think that myself or somebody else is going to stand up in the witness box tomorrow and say that we had automatic weapon fire incoming at us, because that wasn’t the context of that gunfire:”

There’s no doubt that they would have had hunting weapons in there. But clearly the shots [that] had occurred overnight in my view were done for effect as opposed to ... someone hunting deer.

In fact, to Inspector Carson’s knowledge, First Nations people had never used or pointed their rifles at an OPP officer since they had occupied the military range in 1993.

It was evident to Mr. McCabe that John Carson wanted to ensure the gunfire reports were not overstated or exaggerated at the injunction hearing.

But given the events of September 4 and 5, Inspector Carson “absolutely” felt an “injunction should be granted on this urgent basis.” Waiting two to four weeks for an injunction was a serious concern for Inspector Carson. John Carson explained:

There was a number of issues, I would suggest all of the concerns that had arisen to that point. We had the altercation on September 4. There had already been concerns in the community, and the ability for us to maintain security ... all [were] going to be significant challenges. I felt it was important that some direction be sought through the courts in regards to the ownership and direction relative to the ownership as soon as possible, before anything occurred that caused us other grief ...

We’d already had altercations and we’d had a situation where we didn’t even have dialogue happening and I was certainly concerned that ... without some stability, and without a court injunction, it really put us in a tough position trying to deal with all this.

Inspector Carson was also hoping a timely injunction would stimulate a dialogue with the occupiers.

About an hour and a half later, Inspector Carson confirmed with Mr. McCabe that A/D/S/Sgt. Wright would testify at the injunction hearing the following day.

Chief Superintendent Coles thought Inspector Carson should remain at the command post and not travel to Sarnia to testify. Inspector Carson explained to the MAG lawyer that Mark Wright had been involved with Ipperwash since May 1993 when First Nations people occupied the military range at the army camp: “Other than myself, he’s the only one that has been ... intimately involved in all aspects of this operation.”

Inspector Carson agreed to have A/D/S/Sgt. Wright meet with Mr. McCabe at the Sarnia courthouse at 8:00 a.m. the following morning to discuss the officer’s evidence for the injunction application.

The OPP sent a fax to Mr. McCabe with the names of twenty-six people who had occupied Ipperwash Park property since the evening of September 4, 1995.

This was the last contact on September 6 between Inspector Carson and Mr. McCabe. From his conversation with the Incident Commander that day, Mr. McCabe believed Inspector Carson and the OPP intended to “stay the course” while the government sought the injunction.

A/D/S/Sgt. Wright was surprised he had been asked by Inspector Carson to testify at the injunction hearings in Sarnia. He considered this “a rather daunting task” and “was hoping [he] wasn’t going to be the guy.”

Mr. McCabe wanted the injunction materials to be served on the occupiers. He spoke with Inspector Linton and A/D/S/Sgt. Wright early that evening to ensure that the Aboriginal occupiers received notice of the court application.

### **11.13 Attempts to Communicate with the Occupiers**

Inspector Carson was aware on September 6 that it was important for the OPP to establish a dialogue with the park occupiers. It was the third day of the occupation and there had been no meaningful communication with the Aboriginal occupiers.

Inspector Carson suggested to Sergeant Seltzer that Constable Vince George go to the park with OPP negotiator Sergeant Marg Eve. Constable Vince George, born and raised on the Kettle Point Reserve, was conversant with the cultural issues and knew the Stoney Point occupiers. Inspector Carson also suggested that Lorne Smith speak to Elder Robert George, father of Vince and Ron George, at the Kettle and Stony Point Reserve. He “felt Bob George had influence with the occupiers, or at least knew people who were of influence” and who could “assist us in dialogue.” He thought Lorne Smith should also speak to other Elders at Kettle Point such as Earl Bressette, who was well respected in the First Nation community. Even if the OPP was not successful in establishing “direct dialogue,” Inspector Carson “wanted the message to be delivered, however that might occur,



that we intended to keep this peaceful.” Inspector Carson also wanted “some sense” of how the occupiers were “feeling,” their “anxiety” level, and “intentions.”

Sergeant Seltzer agreed that Constable Vince George’s role should be confined to introducing Sergeant Marg Eve to the occupiers, “just to help us get in.” Sergeant Seltzer and the other OPP officers “were very sensitive to Vince’s position; just introduce us and we’ll take it from there.” Negotiator Eve would then be responsible for entering into a dialogue with the First Nations people. Sergeant Seltzer believed the occupiers might be more receptive to communicating with a female police officer.

It is recorded in Sergeant Seltzer’s notes that he met with Vince George and Marg Eve to brief them on “the plan” he had discussed with Inspector Carson. He made it clear he wanted the two officers to try to establish contact with First Nations people in the park and find out the identity of their leader. However, when Constable George testified, he had no recollection of this discussion with Sergeant Seltzer, or with any other OPP officer, about assisting the negotiators to open communication with the park occupiers. An entry in Sergeant Seltzer’s notes also says that Constable George would travel to Grand Bend that morning to “talk” with “a contact person.” As I discuss later, Vince George travelled to Grand Bend on September 6 to meet with a confidential source to obtain intelligence on activities at the park. The informant told Constable George that “Buck Doxtator said he had guns in the park, with about six guys from Muncey.”

Sergeant Seltzer, accompanied by Lorne Smith, set out for Kettle Point after 10:00 a.m. Lorne Smith explained the customs of the First Nation community and the way in which Sergeant Seltzer should interact with Aboriginal people on the Kettle Point Reserve:

It was very clear to me that my role was to be listening and that there was a great deal of respect to be paid to the gentleman and that I was to listen and if at all earn the right to speak.

Sergeant Seltzer was also told not to take notes during the visit. The OPP officer had no knowledge of the history of Stoney Point or the rift between members of the Kettle and Stony Point First Nation and the occupiers.

The two men first met with Elder Earl Bressette at Kettle Point. Recorded in Sergeant Seltzer’s notes after the visit were:

- Three hundred people at CFB
- Most not Stony Point but others who have no real claim  
(Elder women originate power to Chief. Others held above him — Lorne)

- heavy machine guns ...
- Trust OPP and always has
- Does not know anyone who agrees with what is happening
- No burial grounds known

After this meeting, Sergeant Seltzer returned to the command post to inform Inspector Carson of his discussions with Earl Bressette.

Sergeant Seltzer and Lorne Smith returned to Kettle Point in the middle of the afternoon to meet with Robert George (“Nobby”) at his home. Mr. George discussed the 1942 appropriation by the Department of National Defence, the dislocation of the Stoney Point people, and their transplantation to the Kettle Point Reserve. Inscribed in Sergeant Seltzer’s notes:

- Indian Affairs will not recognize Stoney Point persons as a reserve in itself and now [Stoney Point people] are simply saying, we are here to stay — recognize us as “people” having had our land taken regardless of whether we are a “band” or not.

Robert George’s son Ron (“Spike”) joined the conversation. Ron George was aware that Sergeant Seltzer was anxious to “open up a line of communication with someone at the park and they specifically were looking for our help to do that.” Of note is the following comment regarding possible spokespersons at the park and the relationship between communication with the occupiers and safety:

- *Spike and Bob think perhaps Judas or Glenn might talk if no arrest is made — because all agree, Lorne, myself, Bob and Spike, that safety will start only when we can open communication. (emphasis added)*

Also noteworthy is the following inscription in Sergeant Seltzer’s notes:

- No known burial ground at property but 1 person thought to be buried there
- of value is that Stoney Point is a flint field
- Stony Point young and impatient radicals see Prov. Park takeover as the same as 2-year slow occupation of DND property. It doesn’t matter who owns it now — it was S.P. people owned ...
- Females are respected when they are mothers of chiefs due to genetic powers ...



- Indian custom is to never be lied to. You must never make a flippant remark. They will hold you to it. NEVER LIE

Sergeant Seltzer learned that spokespersons such as Roderick George (“Judas”) would be reluctant to talk to the OPP for fear of being arrested. At that time there was a warrant for Roderick George’s arrest.

Ron George went to the army camp after this meeting to find Roderick George. He noticed a “surprisingly” large number of police officers on Army Camp Road who stopped him as he drove to the built-up area. Ron George explained he was looking for Judas. But when he arrived at the base, Judas’s daughter told him her father was not home.

After speaking to Earl Bressette and Robert George, Sergeant Seltzer had a “very strong impression” the park occupiers wanted to talk with someone in authority and power to deal with their claim to the land. That was obviously not someone from the OPP.

It is surprising that Sergeant Seltzer did not know the history of Stoney Point and the tense relationship between the occupiers and people on the Kettle and Stony Point Reserve. Until he spoke to Earl Bressette and Robert George, he was unaware of this rift between the Aboriginal people: “I didn’t appreciate at the time there was any rift happening there.”

September 6 was the third day of the occupation. Clearly it was important for OPP Crisis Negotiators to be aware of the history and tension between the official Band and the occupiers, particularly when they were seeking information and advice on how to initiate dialogue with the occupiers. Inspector Carson and other members of the command team, such as A/D/S/Sgt. Wright, were aware of this information. This information should have been conveyed to Sergeant Seltzer.

In my view, OPP officers whose responsibility is to open up a dialogue with First Nations occupiers should have knowledge of the Aboriginal community, their history, and issues of concern to them. Without this information, it is difficult to establish meaningful communication and achieve the objective of de-escalating an Aboriginal protest. Native awareness training and an understanding of First Nations issues in the Ipperwash area was lacking amongst many officers involved in the OPP operation. This knowledge was critical, particularly for negotiators attempting to open up communication with the First Nations occupiers. This issue is discussed in detail in the Part II report. I am mindful that the OPP have instituted changes in this area. I commend these and continued improvements, which I discuss in Part II, in training negotiators and other police officers in First Nations culture, history, and traditions.

## 11.14 Mark Wright's Attempts to Communicate with the Park Occupiers Fails

A/D/S/Sgt. Wright and Sergeant Eve approached the park fence about 3:00 p.m. in a further attempt to initiate a dialogue with the occupiers. A number of First Nations people, including men, women, and children, congregated at the park store and yelled at the two officers. With mirrors from the park washroom, children reflected sunlight into the eyes of Mark Wright and Marg Eve. The atmosphere was tense. A boy of about fourteen years of age approached the fence in an ATV and told the officers to leave the property. A/D/S/Sgt. Wright said he wanted to speak to someone in charge. Members of the press were in this area.

Sergeant Marg Eve, unlike Mark Wright, was a trained negotiator. Another reason she was chosen to approach the Aboriginal people was that she was a woman. A/D/S/Sgt. Wright understood that there was a “tradition that the females in the First Nations culture” were considered representatives of “their community” and, consequently, a female OPP officer might have more success in opening up communication with the occupiers.

Several First Nations occupiers, such as Gina George, Glenn George, and Isaac Doxtator, saw Mark Wright and Marg Eve approach the fence in an attempt to speak to them. But the Aboriginal people at the park had little interest in entering into a dialogue with the Ontario Provincial Police. Marlin Simon and other First Nations people feared being targeted as leaders of the occupation, criminally charged, and ultimately jailed. People at the park had been involved in other Aboriginal protests and had witnessed the incarceration of First Nations spokespersons.

Gina George stood close to the fence and remembers that Mark Wright and Marg Eve waited “for quite some time” to speak to a spokesperson for the occupiers: “When they said they wanted to talk to somebody, leaders or something, I just motioned to them that my children would talk to them if they wanted somebody to talk to.” It was clear that the Aboriginal people did not want to engage in any meaningful communication with the OPP. They did not believe the OPP could resolve their grievances concerning their land and their sacred burial sites.

After waiting for about forty-five minutes, a black Camaro with two men inside approached the fence line from inside the park. One of the Aboriginal occupants said, “Scott Ewart sends his regards.” Scott Ewart, a bailiff from Middlesex County, had been involved in the occupation of the military range in May 1993. The occupier then asked Mark Wright if he spoke for his people. The OPP Sergeant replied that he did. In turn, Mark Wright asked the Aboriginal man if he spoke for his people, and there was no response. A/D/S/Sgt. Wright



said he wanted to discuss the park occupation with a First Nations person. Sergeant Eve tried to explain that “talk[ing]” was required to resolve the situation. Mark Wright testified that the man responded, “We’ll do our talking with guns.” The driver then accelerated, turned the car 180 degrees, and “spinning” his tires, returned deep inside the park.

A/D/S/Sgt. Wright considered the statement a threat to their safety. The two OPP officers left the site.

Although A/D/S/Sgt. Wright did not know the two Aboriginal men, Dudley George was identified by Sergeant Eve in her notes as the person who made the comment about resolving their issues with guns:

There appeared to be no one in charge. Dudley George — know[n] to myself from the summer camping, driving in a black Camaro — driven by David George. They advised they were not willing to talk. Stated that Wright was a liar and this would be settled by guns. They drove off.

Sergeant Eve did not give evidence at the Inquiry. She died in a car accident before this Inquiry was established.

The OPP failed to communicate critical messages to the First Nations people, namely, that the OPP’s goal was to resolve the occupation peacefully, that the police would not remove the occupiers from the park, and that the occupiers should remain within the park boundaries. Had these crucial messages been conveyed, it would have undoubtedly averted many of the misunderstandings that developed between the occupiers and the police in September 1995.

At no time did A/D/S/Sgt. Wright inform Bert Manning or other First Nations occupiers that, as long as they remained in the provincial park and did not venture into the sandy parking lot, there would be no problem from the OPP’s perspective. At no time did A/D/S/Sgt. Wright make it clear that a line was drawn at the park fence. Mark Wright agreed that from September 4, the day the park was occupied, until the confrontation on September 6 when Dudley George was shot, this was “never specifically communicated” to the First Nations occupiers. A/D/S/Sgt. Wright acknowledged this was a missed opportunity. I agree.

A/D/S/Sgt. Wright, with Sergeant Seltzer and Sergeant Eve, had tried to initiate a dialogue with the park occupiers. It was A/D/S/Sgt. Wright’s role to introduce the OPP negotiators to the First Nations people because he had been involved with this Aboriginal community since 1993. But each attempt to open communication with the occupiers was unsuccessful.

In my view, the OPP might have been more successful if they had resorted to other measures to stimulate a dialogue with these Aboriginal people. The fact

that Sergeants Seltzer and Eve were dressed in police uniforms rather than civilian clothes was likely not conducive to opening up a dialogue with the First Nations occupiers. Inspector Carson in fact raised this when Sergeant Eve and A/D/S/Sgt. Wright returned to the command post that afternoon. Also the OPP could have resorted to other techniques, such as setting up a field telephone to initiate communication with the park occupants. First Nations people were fearful that if they engaged in dialogue with the police, they would be targeted as leaders and charged with criminal offences. A/D/S/Sgt. Wright agreed that, in retrospect, a field telephone “would have been helpful”; “if that was their concern and they wanted to remain anonymous, that would have been a way to get over that hurdle.”

Another reason for the park occupiers’ reluctance to speak to A/D/S/Sgt. Wright and Sergeant Eve was because, as Kevin Simon said, they wanted “somebody with the authority” from the government to initiate “meaningful negotiations” to enable the First Nations people to reclaim their land. Gina George explained that the police could not “assist with settling a land claim.”

Glenn George recalls that Sergeant Eve stated she was the negotiator. Glenn George did not think the OPP officer was the appropriate person to engage in a meaningful dialogue with the First Nations occupiers. Glenn George said this at the hearings:

And I just told her that, you know, my understanding under a land dispute, there’s to be like a third-party tribunal made up of all of these people involved. And I just looked at her and said, “You’re not that negotiator,” and I walked away ...

... See, land negotiations are to be by a third-party tribunal. Not by somebody who claims to have authority ...

*... You know, they show up with a gun and a badge and they say they’re a negotiator. Like, come on now ... [I] wasn’t born yesterday ... I know for a fact that Indian Affairs knew about these things. I know that the DND knew about these things. Provincially, I knew that they knew about the things within the park. (emphasis added)*

In my view, the occupiers might have been more receptive if negotiators on behalf of the federal and/or provincial government had appeared at the fence to try and resolve issues that had been plaguing the community for decades, such as the appropriation of the Stoney Point Reserve in 1942. Had government officials with authority to resolve these issues confronting the First Nations people



appeared at the park fence, the occupiers would likely have been more amenable to participating in a dialogue. Undoubtedly this would have helped the OPP to realize the objective of Project Maple, namely, to resolve the occupation by peaceful and non-violent means.

A/D/S/Sgt. Wright and Sergeant Eve returned to the command post at about 4:45 p.m. They discussed with Inspector Carson their failed attempt to meaningfully communicate with the occupiers, and the comment, “They will settle this with guns.” The presence of women and children as well as the media was also described. As mentioned, Inspector Carson suggested to Sergeant Eve that she not approach the First Nations occupiers in police uniform — dressing in “plain clothes and jeans ... might create a more comfortable situation for the approach.”

In Project Maple, there was no reference to the technical means by which the OPP would establish communication with the occupiers. There is no reference to the OPP’s negotiating strategy or to the messages to be conveyed to the occupiers. Project Maple did not describe resources outside the OPP, such as First Nations negotiators Ovide Mercredi, Bruce Elijah, or Bob Antone — people who could be instrumental in opening up a meaningful dialogue with the park occupiers.

John Carson agreed that, in retrospect, it might also have been useful to involve Bonnie Bressette, the former Chief and Councillor of Kettle and Stony Point First Nation, in the Ipperwash occupation. Inspector Carson was not aware Bonnie Bressette was in the park that day with her children. However, Constable Vince George had seen her that afternoon from the air in the helicopter patrol of the park.

Cyndy Elder of “Approaches Mediation” called the OPP at about 4:00 p.m. to offer her assistance to Inspector Carson that afternoon. The First Nations mediator explained to Sergeant Drummelsmith that she had had contact with Inspector Carson in August 1995 after the army camp occupation. Ms. Elder, who was currently involved in the Gustafsen Lake protest in British Columbia, suggested “there may be some stuff from that you might be able to use that might help” with the Aboriginal people in Ipperwash Park. Sergeant Drummelsmith promised to convey the message to Inspector Carson.

When Sergeant Drummelsmith relayed the telephone message a few minutes later, Inspector Carson recognized the mediator’s name. The Sergeant said, “[S]he wanted you to call her and seemed to think it was important.” But Inspector Carson was too busy to return Ms. Elder’s call that day: “Say I’m extremely busy and unless there is something that she can supply you of information that is of urgent nature, I just don’t have time ... I am inundated with phone calls.” This was despite the fact that the OPP had had no success establishing communication with the occupiers. Inspector Carson acknowledged at the hearings that one of the

most difficult aspects of managing an incident such as Ipperwash is to engage in dialogue with the occupiers. But at the conclusion of his conversation with Sergeant Drummelsmith, Inspector Carson said, “The best I can do is some time tomorrow.”

Unfortunately tomorrow was too late. About six and a half hours later the OPP officers marched down East Parkway Drive to the sandy parking lot with their shields and guns. In a confrontation with the First Nations people, Dudley George was killed and other Aboriginal people and OPP officers were injured.

### **11.15 Bonnie Bressette Visits Ipperwash Park on September 6: “Everybody has a right to have a sit-in or a protest ... It’s to create an awareness.”**

Bonnie Bressette, Councillor of the Kettle and Stony Point Band, decided to drive to Ipperwash Park on September 6 at about 10:00 or 10:30 a.m. The former Band Chief “went down to talk” to the occupiers and to “ask them why they were in the park.” Many of the occupiers were her relatives, and in the Anishnaabeg community, “it [doesn’t] matter whether somebody is someplace that is not of my blood, they are all our family.” The road was blocked as she turned from Highway 21 to Army Camp Road, and she saw four or five police officers. After identifying herself, she was permitted access to the park area.

As she drove toward Ipperwash Park on the road parallel to Army Camp Road, a helicopter hovered over her car: “There was a helicopter following me. It was up over top of the car.” The helicopter followed her “all the way” to the park.

Bonnie Bressette joined Dudley George, Glenn George, and Roderick George at a picnic table near the park store. The helicopter continued to fly over them, which made her very uneasy:

It stayed above us for quite a while ... I was feeling uncomfortable because I could see somebody up there with a camera and I could see somebody with a gun pointed down at us. And it stayed there for quite a while and then it would kind of go away and then would come back again. [It] never really left the area but [would] go away and then come back ...

It had become a kind of a eerie, scary thing for me, not knowing what was going on, till I was able to sit and talk and have my crying jag.

Bonnie Bressette could also see many police officers armed with “long guns” outside the park across the road on East Parkway Drive. “I didn’t count them, but there was sure a lot of them” just standing in a “big, long row.”



Bonnie Bressette became anxious: “I was feeling uneasy with the policemen behind with all the guns and the helicopter overhead and they had a gun there ... I actually started crying.”

Dudley George reassured her. He told her the police were aware that the people in the park had no weapons and that the OPP would not harm them. In a moving passage, Ms. Bressette described how Dudley comforted her:

He said, “Don’t be afraid.” He said, “They’re not going to do anything to us in here.” He said ... “They know that there’s just men in here and they know we’ve got no weapons.” He said, “They don’t shoot anybody that don’t have no weapons. They have something that can tell how many’s in here. It shows,” he said, “body mass.” I remember that. It can tell you whether that’s an adult or a kid, and he said, “Don’t be afraid.”

Glenn, Dudley, and Roderick George explained that the occupiers were in the park “because they wanted to bring attention that this park was located on our ancestors’ burial ground and that they wanted it to stop”; “it had to stop ... [and] they were there ... to bring attention.” Bonnie Bressette said at the hearings: “Everybody has a right to have a sit-in or a protest, there’s nothing wrong with that. It’s to create an awareness.”

They felt it was important to take a position so that people using the park would no longer picnic and camp on or near their ancestors’ graves. The former Chief of Kettle and Stony Point discussed at the hearings the high legal costs and the length of time it takes before First Nations issues are resolved through the court system: “By the time we get anything into the court system ... we don’t have the economy to continually keep supporting the high legal costs of anything.”

Bonnie Bressette emphasized the root of problems like this:

When people who have the responsibility to address things like this never address it until there’s been a protest, a demonstration or whatever. And that’s what it was, to say this is our ancestors’ burial ground and it should not be a park where people can party and carry on anymore.

Mrs. Matheson, the Assistant Park Superintendent’s wife, had told Bonnie Bressette several years earlier that “Indian remains” were dug up when a pump house was installed in Ippeewash Park.

Bonnie Bressette was aware that Dudley George’s great-grandfather Albert George had lived on these lands, and thought that Dudley’s ancestors may have

been buried in the park. An Elder had also told her that First Nations people came to this land to settle their arguments — it was known as “neutral territory” on which “they were safe” to settle their differences — “it’s sacred ground.”

After listening to Dudley and Glenn George, Bonnie decided to retrieve two eagle feathers from her car that had been given to her by an Elder. As Bonnie Bressette explained, “[E]agle feathers ... give you safety and you feel real good when you have” them. As she walked to her car, the helicopter “came real low again.” As she handed the eagle feathers to Glenn George, she said, “Glenn, I want you to have these, you and the boys down here.” The helicopters “were right over us, so low that the dust was all around,” and “they were taking pictures.” Glenn held the two eagle feathers “up in the air ... so they could see what it was” — Bonnie Bressette “felt comfortable ... leaving them with [her] feathers.”

Bonnie Bressette remained in the park for about two hours. Dudley George was in good spirits. He teased the officers, which angered them. He told Bonnie he had been threatened by the OPP: “They told me when they get in here, I’m going to be the first to get it.” But Dudley George was not frightened.

Bonnie Bressette asked Dudley and Glenn if they needed anything. They asked for food and cigarettes, and suggested that she return with the kids for a picnic.

Bonnie Bressette left the park about 12:30 p.m., bought groceries, and went home to collect her family. Her husband, Fred, daughters Gail and Barbara, and about eight of her grandchildren drove to the park later that afternoon. Again she was stopped at a police checkpoint and a helicopter followed their van into the park. There were about twelve people in the park at that time.

The noise and dirt of the helicopter was very irritating as they tried to eat their meal in the park. They flew “real low” and “dust would all come up” but Bonnie Bressette, her family, and the other First Nations people continued their meal.

Bonnie Bressette had intended to stay into the evening. Children in the park wanted to swim in the lake with her grandchildren. However, many “yellow jackets” were out that evening and both her husband, Fred, and her granddaughter Chelsea are “highly allergic” to bee stings. Fred did not have his epi-pen with him and they decided to be cautious and return home. They left the park at about 6:00 p.m.

Dudley and Glenn George suggested she come back later that evening and sit with them around a fire. Bonnie Bressette intended to join them.

Bonnie Bressette spent about four to five hours in Ipperwash Park that day, and at no time did she see the occupiers with weapons or firearms. Had she had any such concern, she would not have brought her children and grandchildren to the park and compromised their safety:



... nothing will ever make me believe that because I would never — and any mother that thinks of her children and the protection of them, 'cause I do, would ever take their children where there was guns.

Bonnie Bressette left the park “feeling good” and unconcerned: “I thought the boys are okay ... they were quite comfortable, that nobody was going to bother them.”

It was the last time Bonnie Bressette saw Dudley George. He was shot a few hours later in a confrontation with the OPP in the sandy parking lot. She recalled that the last time she saw Dudley, he was in good spirits and “he was proud of himself”:

*By having a sit-in down there to create [awareness] and let people know that this was a burial ground for our ancestors and ... being part of creating this awareness and saying, “This has to stop.” He was proud of himself. (emphasis added)*

While the OPP were equipping themselves with ASP batons and trying to secure military vehicles and fire-retardant suits during the day of September 6, First Nations people were swimming in Lake Huron and picnicking in the park.

### **11.16 MNR’s Presence at the Command Post**

Park Superintendent Les Kobayashi continued to attend the command post briefings throughout the day. He was in contact with MNR officials, such as Peter Sturdy, and he was asked to comment on the progress of the injunction at the police briefings.

The MNR Park Superintendent continued to convey information he received at the command post to Mr. Sturdy, such as police operations and the state of affairs at the park from the perspective of the OPP. Neither Inspector Linton nor Inspector Carson placed restrictions on the information that could be conveyed to Mr. Sturdy. When Mr. Kobayashi learned at the police briefings about the rock throwing at the picnic table incident, the OPP aerial surveillance, and the gunshots purported to be automatic weapon fire, this too was relayed to MNR official Peter Sturdy. Mr. Sturdy, a participant at the Interministerial Committee meetings on both September 5 and 6, had no reservations or concerns about sharing any of this police information with Ontario government bureaucrats and political staff. Unlike Inspector Fox, Mr. Sturdy was not a trained police officer.

Mr. Kobayashi did not appreciate at that time what information should be passed up his “chain of command” and what information should remain at the OPP

command post and not be disclosed to government officials. As Mr. Kobayashi acknowledged in his testimony, this is a lesson learned from Ipperwash.

In my view, a lesson learned from Ipperwash is that MNR officials should not participate in command post briefings with the Incident Commander and other OPP officers. Nor should MNR officials be present at the command post. Although it is important for communication to exist between the OPP, the Park Superintendent, and other MNR officials, the communication should take place with an OPP officer appointed to liaise with these park officials. Such an arrangement would allow for valuable exchanges of information between MNR and the OPP without distracting the Incident Commander from police operations. Moreover, such an arrangement would allow the Incident Commander to be insulated from the possibility or perception of political interference. In the Part II report, I stress the importance of respecting traditions of ministerial responsibility in police–government relations in order to ensure transparency and accountability.

Les Kobayashi should not have been privy to discussions in the command post about the OPP strategies, unconfirmed reports received by the OPP, or police intelligence.

### **11.17 MPP Beaubien Appears at the Command Post**

At about 6:40 p.m., MPP Marcel Beaubien arrived at the OPP command post. Despite his claim that he had been invited to the OPP briefing, it is my view that he arrived at the OPP Forest Detachment unannounced and without such an invitation.

Inspector Carson had no hesitation meeting with Marcel Beaubien as he had done earlier that day with Bosanquet Mayor Fred Thomas. In fact, Inspector Carson considered such exchanges of information “valuable.” It could alert the police to information they may not be aware of or it could validate information the police received from other sources. It is also a conduit for information in that it provides the OPP with “a vehicle to provide information that can be distributed through the community.” Inspector Carson had no reservations about meeting MPP Beaubien at the command post on September 6, nor did he consider it improper.

The meeting with Mr. Beaubien took place in the command trailer and was attended by Inspector Carson, Inspector Linton, Les Kobayashi, and Marcel Beaubien. It was clear at the outset that the MPP wanted to convey his constituents’ concerns and frustrations at the park occupation, and that he was in contact with the Premier at Queen’s Park. According to the typed version of the OPP scribe notes:



Marcel Beaubien advised that he had sent a fax to the Premier advising of his intentions and that he wanted a return phone call regarding his intentions.

The handwritten version of the OPP scribe notes record Mr. Beaubien conveying to the OPP: “Premier is in constant touch. Good communications.” From these statements, Inspector Carson understood that there was good communication between Premier Harris and MPP Beaubien. Mr. Beaubien testified that he might have told the OPP the Premier was following the park occupation. Commissioner O’Grady agreed that, on the basis of these statements, one could conclude that the Premier had taken a personal interest in the occupation.

Inspector Linton asked Mr. Beaubien if there had been feedback from the Solicitor General. The MPP replied that officials from the Solicitor General’s office were meeting that day. Later that evening, Inspector Linton called Superintendent Parkin to tell him “Marcel Beaubien was in tonight. He had talked to the Solicitor General ... and the Attorney General.” Inspector Linton should not have been in a position to learn about feedback from the Solicitor General from an MPP. Such feedback, should it be provided, should come through proper ministerial channels and the chain of command within the OPP.

Inspector Carson explained the injunction motion scheduled in Sarnia for the following morning to Mr. Beaubien, and the criminal charges that could result if the application was successful and the occupiers refused to leave the park. John Carson told him there was no land claim — “there has been no legal claim to the land.” Les Kobayashi added that research had been conducted and no burial ground was on the property of Ipperwash Park.

Inspector Carson then described the occupation of the park on September 4 — the officers were outnumbered, “they were swarmed,” and the OPP decided to leave the park for safety reasons. There were twenty to forty Aboriginal people in the park at that time. The presence of women and children at the park, he added, placed the police in a “very awkward position.” He also told the MPP that Chief Tom Bressette did not support the First Nations occupation.

Inspector Carson tried to reassure Mr. Beaubien that he understood the concerns of residents, that there were approximately thirty officers — two ERT teams — monitoring the area, and that the OPP were visible to members of the community. Safety was essential.

The Provincial Member of Parliament was disturbed to learn that the OPP had left Ipperwash Park because they feared for their safety. His constituents were asserting that if the OPP did not have the capability or resources to do the work, others should take over the work, such as the army. As Mr. Beaubien listened to

Inspector Carson, he thought these comments gave “some credibility” to what he was hearing from his constituents: “The police can’t do the work in this area.”

Mr. Beaubien did not seem satisfied and indicated to the OPP that if the occupation “can’t be handled by police services, something has to be done to handle the situation.” Property owners in the Ipperwash area did not feel they were “being treated equally.” Some of Mr. Beaubien’s constituents thought there was a two-tiered system and believed the park occupiers should have been arrested by now. He mentioned that a meeting of over 100 residents had taken place, and community members were frustrated and anxious. Mr. Beaubien said he had been in contact with Chief Superintendent Coles. It was clear to Inspector Carson that Mr. Beaubien wanted the First Nations occupiers out of the park.

It is evident from Marcel Beaubien’s statements to the Incident Commander that the MPP was trying to exert pressure on the OPP in its operations at Ipperwash Park. This was inappropriate.

After the meeting, Park Superintendent Les Kobayashi thought about Mr. Beaubien’s concerns and frustration on behalf of his constituents and his view that something should be done by the OPP. He contacted Peter Sturdy to advise him of Mr. Beaubien’s visit to the command post.

Mr. Beaubien had no concerns about his presence at the OPP command post on September 6. He considered the information conveyed by the police valuable, and thought that he could also be a valuable conduit for the OPP to relay information to his constituents.

Although Marcel Beaubien “didn’t have any problem” meeting with John Carson at the command post, he understood a perception might arise that politicians were interfering in operational matters.

OPP Commissioner O’Grady was not aware Mr. Beaubien had visited the command post on September 6 until months later. He does not think it was appropriate that politicians, including MPP Beaubien or Mayor Thomas, attended at the OPP command post. The Incident Commander is involved with operational activities and “it would have been much better if there had been another site removed from the command post where someone could talk to these individuals.” “It would [have] be[en] better if” Mr. Beaubien “wasn’t in the command post and that information was exchanged between another person and him.” The Commissioner also thought some topics of conversation between the Incident Commander and the MPP were regrettable, such as the references to the Premier. In Commissioner O’Grady’s view, information on the Premier’s personal views and wishes should not be discussed with operational officers. I agree with Commissioner O’Grady on this point.

Politicians should not be present at the command post to obtain police information and discuss their concerns with the Incident Commander. As I discussed



in relation to the Mayor of Bosanquet's visit to the command post, I think it is important for the OPP to both receive and convey information to political and community representatives. However, for the reasons previously expressed — primarily the perception or reality of political interference in a police operation, and the importance of allowing the Incident Commander to focus on the operation — a buffer or community liaison officer should be designated by the police to engage in communication with politicians and other community representatives. This officer should convey necessary information about police operations to the community and receive information about ongoing events from community representatives including elected officials. Complaints about police performance, particularly strong complaints by elected officials such as those made by Mr. Beaubien, should be filtered through proper channels within the Ministry of the Solicitor General and the OPP. Having such complaints communicated directly to the Incident Commander creates a risk of undue influence and political pressure.

### **11.18 Reaction of Occupiers to the Perceived Increased Police Presence**

Kevin Simon did not go to work on September 6. He had an “uneasy feeling” that the situation at the park was escalating. The previous night he had witnessed the OPP officer's threat to Dudley George that “you're going to be first.” Dudley had told him that he had been threatened again when the police removed the picnic tables that morning. Kevin Simon and other park occupiers noticed more police officers throughout the day in the vicinity of the park.

Glen Bressette drove Dudley George to the town of Wyoming on the morning of September 6. They saw a number of officers in Forest, several of whom had congregated near the baseball field at Kimball Hall. Gerald George from Kettle Point was in Forest a number of times that day and he too noticed many police officers and cruisers at the OPP Detachment, near the baseball diamond at Kimball Hall, and on Highway 21.

Helicopters hovered over Ipperwash Park at various times throughout the day. A person leaned out of the chopper and videotaped the First Nations people. These helicopters flew very low, blowing dust, disturbing picnics, and other activities in the park. The chopper's low altitude and loud noise was both unnerving and irritating to the First Nations occupiers. Isaac Doxtator described a yellow helicopter “flying right about the trees. It was shooting dust and sticks all over on the ground where people were ... [r]ight over our heads.”

Someone from the yellow helicopter took “pictures of everybody in the park”; “big cameras stuck out the side of the door.” Stewart George described how the

helicopter disrupted the picnic, stirred up dust, and blew their food away: it “was the one that was sitting right up above where we had the food sitting on the table and ... the prop wash was blowing dirt and everything all over the place, making a big wind.”

The low altitude at which the helicopter flew and the disruption it caused upset David George and other First Nations people. At approximately 11:30 a.m., a helicopter flew “pretty low, just above the trees ... probably fifty feet” — “it was kicking up dust, throwing stuff around — plates,” and “people were getting upset about it.” Exasperated, David George, Wesley George, and Clayton George picked up rocks from the ground and began to throw them at the helicopter.

Marlin Simon similarly described the yellow helicopter:

[It] was coming right down, it was making big dust storms, wind was blowing everything all over, anything that wasn't nailed down pretty much was blown all over ...

... mostly everybody was running around trying to gather up whatever was getting blown around.

“A guy with a big camera” in the doorway of the helicopter was “aiming it all over.” In their exasperation, First Nations people made “hand gestures” to the people in the helicopter, “shooting them the finger.”

Detective Constable George Speck, accompanied by Constable Paul Evans, was in the yellow helicopter. The MNR helicopter was operated by an MNR pilot. Detective Constable Speck testified that flying at “tree level,” the helicopter “kick[ed] up the dust on the ground.” He saw park occupiers throw stones at the helicopter. The park area was filmed from the air.

The OPP boat anchored off Lake Huron was another a reminder of the police presence in the Ipperwash Park and beach areas. The police continued to stop First Nations people at the various checkpoints and ask them for identification. They also asked several people if they would open their trunks to be searched by the OPP.

The OPP checkpoint that had moved to East Parkway Drive and Army Camp Road on the morning of September 6 was very visible to First Nations people in the park. Officers and their cruisers were stationed at the intersection.

The perception of increased police presence grew as the day progressed. Tension increased in the park and First Nations people became anxious. The occupiers decided to take measures for their protection and to secure the park. Marlin Simon explained that “everybody was feeling that it was escalating ...



we started like a rotation for the different observation points where people would be manning them at different times.”

Glenn George said: “There was this thing happening. It was in the air, you could sense ... this thing of uncertainty.”

The occupiers drove back and forth between the park and the “built-up” area to create the impression to the police that more First Nations people were in these areas than there actually were. Elwood George “sensed something was going to happen” when he came to the park that afternoon and noted the “noticeable increase in [the police] presence.” He and Robert Isaac were among those who thought they “should drive our vehicles around” and “get a little bit [of] movement within the park.” This was “to lead the police to believe that there was actually more of us ... than there actually was.”

The “younger guys” ran “from bush to bush” when the helicopter with video cameras flew overhead to make it difficult for the police to determine the number of people in the park. In the words of J.T. Cousins, who was fourteen years old at that time, “[I]t makes like there was people in the park” and “they can’t get a full count.” But, unfortunately, these activities led the police to believe there were nefarious activities occurring in the park, and that the First Nations people were engaged in “offensive,” not “defensive,” preparations. This further escalated the tension.

Elizabeth Stevens, who was a Band Administrator of the Kettle and Stony Point Band, decided to drive to Ipperwash Park on September 6. She also noticed a pervasive OPP presence: “You could go any place and [you were] bound to see a police cruiser at that time”; it “didn’t matter where you went.” There was

... a high level of concern because there were OPP officers all over the area and a lot of Band members were scared ... We knew there were a lot of OPP and it was kind of a scary day.

Stacey George was another person who arrived at the park after hearing reports of a large buildup of police that day. The occupiers were “getting real uneasy,” and were “kind of scared on what’s actually going to happen.” Mr. George thought “they were going to come in and try to arrest us; drag us out.” But there was a “consensus” amongst the occupiers that “no one’s leaving.”

The First Nations occupiers began to collect sticks, rocks, bats, and pipes to prepare for a possible encounter with the police. They needed to defend themselves. They did not know that the OPP had no intention of entering the park if they stayed within the park boundaries. As I have repeatedly mentioned, the lack of communication by the OPP was a serious mistake.

Marlin Simon decided to prepare the school bus because he “didn’t know if the police were going to be coming in and moving everybody out.” Mr. Simon explained:

Everybody was pretty much thinking that something was going to happen and we were kind of getting ready. There was discussion about what’s going to happen. If we were going to let them drag us out or ... try and defend ourselves or whatever.

The school bus had been helpful in the past in “creating diversions,” such as when the Aboriginal people assumed control of the army barracks on July 29, 1995. The school bus had not been driven for about a month. Mr. Simon installed a new battery and filled the bus with gas. He also put fuel in about six gas cans and placed them in various locations, such as the bush near the inland lakes, in the park, and inside the bus. As he fuelled the bus at the maintenance shed, a helicopter flew near him and was only about “fifteen feet in the air from the ground.” It flew at such a low altitude, Marlin Simon thought the helicopter was “going to come and land right there.” After refuelling the bus, he drove it to the park.

First Nations people made “security runs” with cars and the dump truck to various locations. They also established observation points at the Outer Drive entrance to the army camp, at Matheson Drive, and at the main gate of Ipperwash Park. Marlin Simon was one of the people who patrolled the perimeter of the park and the army base.

But the First Nations people were adamant that at no time did they bring guns into Ipperwash Park, nor were there any plans to bring firearms to the park that day. Wesley George explained that, although some of the occupiers owned hunting rifles, there was an agreement to keep guns out of the park:

No guns were allowed to be in the park. It was what you call non-armed protest ... I believe it was a group decision because of what happened in Oka ... They don’t want to have no standoff, don’t want to shoot nobody. That’s the bottom line.

Tina George said that if she thought guns or other weapons were in the park, she would not have allowed her children to play in the park that day. Several young Aboriginal children and babies picnicked and swam at Ipperwash Park on September 6. As mentioned, Bonnie Bressette, Councillor and former Chief of the Kettle and Stony Point Band, brought her grandchildren to the park that afternoon to picnic and swim in the lake.



### **11.19 Vince George's Concerns about Possible Burial Grounds in the Park and Helicopter Surveillance**

After working on photographs of suspects at the OPP Detachment in Forest, Constable Vince George was assigned to helicopter surveillance shortly after 5:00 p.m. He boarded the MNR helicopter stationed in a field at the rear of the detachment with an officer responsible for videos and photographs. Their assignment was to fly over the provincial park and identify the occupiers.

The helicopter pilot “did a sweep” of the camping and maintenance building areas in the park. Constable George felt uneasy on this flight:

He was flying pretty low, too low for my liking at that time ... I thought he was trying to tick-off the people on the inside there ... there were stones flying all over the place.

At the park store area, Constable George identified Dudley George, Dudley's brother Pierre, Les Jewell, David George, Robert Isaac, and Roderick George. He also saw Bonnie Bressette, Fred Bressette, Tracey George, Sherry George, and young children. As they flew over the maintenance area, Constable George watched Marlin Simon pump gas into the yellow school bus that belonged to Warren George, as well as into a five-gallon gas can. Tina George was leaving the area in a car.

A/D/S/Sgt. Wright asked Vince George on September 6 to interview older people at Kettle Point regarding the legitimacy of a burial site in Ipperwash Provincial Park. Constable George asked Mark Wright why the OPP had not investigated this issue at an earlier date. This was the third day of the park occupation, and the OPP had been aware of this claim by First Nations people prior to September 4, 1995. Constable George had concerns about “the colour of right”:

I do remember that specifically I had a conversation with him about why are we making this request right now, meaning we've known of this impending thing of going into Ipperwash Park. And I sort of asked him, Why are we doing this now? Isn't it kind of late? And he indicated, Well, we sort of did something about it. My concern was the colour of right implications.

Constable George added:

It just seemed odd that we were beginning to get an interest in the colour of right issue at that late stage, when we knew some time in advance that [Ipperwash Provincial Park] may be occupied ...

I figured that it was something we would be looking at from the get go ... [O]nce we discovered ... there was going to be an occupation of the Provincial Park, then that would be something that we would be looking at right away.

Constable George raised the burial ground issue with his father, Robert George (“Nobby”), later that evening. He learned that Clifford George had told Vince’s father that a backhoe driver had dug up bones on Matheson Drive near the maintenance shed area. The bones had been reburied.

Vince George was concerned as he left the OPP command post and went off duty at 8:00 p.m. There was a “buildup” of “OPP personnel,” and he “was concerned at that point ... we needed to resolve that.” He called his parents when he returned home. They thought perhaps a community feast could be arranged to generate discussion about the park occupation with the occupiers. Vince George and his parents were “still on speaking terms with family members that were in there.” Constable George thought that “if we all generated [e]n mass[e] to go talk to them and generate some kind of community feast or something where we can sit down and talk about this, this might help resolve the issue, but it never got that far.”

Vince George went to bed that night thinking about the community feast and trying to devise ways of communicating with the occupiers at the park in order to dissipate tension and resolve the situation.

Vince George was awakened “in the middle of the night” to “pounding on the door” and “red lights flashing.” Sarnia police officers stood at his front door. There had been a confrontation between the police and First Nations people. Dudley George was dead.

## **11.20 Chief Tom Bressette Notified of Alarming Comments from the Government**

It was after the Interministerial Committee meeting that Leslie Kohsed-Currie said she heard “shocking” information from a source whom she did not identify at the hearings:

I learned that in the Interministerial Committee, or the Emergency Blockade Committee, that there had been a statement made by Deborah Hutton, the senior advisor to the Premier, that the Premier was quite hawkish about the events at Ipperwash Provincial Park and had stated that he wanted the f-ing Indians out of the park and if necessary, use guns.



Ms. Kohsed-Currie worked in the Negotiations Support Branch of the Ontario Native Affairs Secretariat (ONAS) where she had been employed since 1986. Ms. Kohsed-Currie was “very shocked” and “very upset” when she received this information; “it seemed that the direction on the Interministerial or Blockade Committee was not proceeding as we had normally done in the past” with regard to First Nations occupations. In emotional testimony, Ms. Kohsed-Currie said:

It had always been the goal of the Blockade Committee to find ways to [defuse] the situation, ascertain the interests of the parties, and then deal with it. This was the opposite of the way we had worked for many years, and I was afraid that people’s lives may be at stake.

Although Ms. Kohsed-Currie was very concerned, she did not feel comfortable discussing this information with either her ONAS colleagues or other government employees — “you [could not] talk about these kinds of things in the office at that time.”

She decided to call Robert Watts “in Indian country” from Six Nations First Nation. Mr. Watts had previously been employed by the Union of Ontario Indians and had been on an exchange at ONAS from 1991 to 1994. She believed Mr. Watts had “a lot of respect in the indigenous community in Ontario and across the country.” Ms. Kohsed-Currie

... trusted Bob to discreetly and quietly pass on a warning that would hopefully get a word to the people occupying the park, that there was a potential for a change in the conduct of the province in this kind of situation, so that maybe it could at least advise people. It seems that Ontario was not in [the] talking mode that it used to be, and ... was not going to be talking ... the way it had been talking in these situations to try to diffuse the matter and in turn his attempt to try to say to people, “Be careful, your life or your lives could be at stake.”

Ms. Kohsed-Currie felt that she could rely on Mr. Watts to relay this warning quietly and discreetly.

Mr. Watts was alarmed when he learned the statements alleged to have been made at the IMC meeting. He too thought the First Nations community at Ipperwash needed to be warned.

Mr. Watts testified that Ms. Kohsed-Currie asked him not to reveal that Julie Jai was the source of the information regarding the statement Ms. Hutton made at the IMC meeting. Mr. Watts is “sure” he was told Julie Jai transmitted this

information to Ms. Kohsed-Currie. However, Ms. Kohsed-Currie was adamant when she gave evidence at the Inquiry that it was not Ms. Jai who relayed Ms. Hutton's comments. She was also confident that it was not Eileen Hipfner, Anna Prodanou, Dave Moran, Elizabeth Christie, or others in attendance at the IMC meeting. Despite repeated questioning by Commission Counsel, Ms. Kohsed-Currie did not reveal her source: "I have searched ... my mind for quite a while on that and I am really blank. I don't have a name."

Given how "shocked" Ms. Kohsed-Currie was by this information and her certainty that it was from a "reliable person," I find it surprising that Ms. Kohsed-Currie could not remember who told her what had transpired at the IMC meeting. Ms. Kohsed-Currie recollected that her source was "reliable," but claimed she could not remember anything else about the person who transmitted this information to her.

Robert Watts contacted Chief Tom Bressette immediately after this call. According to Chief Bressette, Mr. Watts conveyed that the Premier said, "Get those f-ing Indians out of the park even if we got to draw guns to do it" at a meeting with his Ministers.

Clearly disturbed by this information, Chief Bressette contacted the local radio station in Sarnia and spoke to reporter Lee Michaels. On tape, Chief Bressette suggested to the occupiers that they "start to negotiate or find a way to move out of the park because there may be trouble with the police officers or something of that nature." This was broadcast on the radio station later that evening.

The Chief decided not to drive to Ipperwash Park to convey this message in person to the occupiers. He thought the most effective and "most appropriate" way to transmit the warning was through the public media. He worried that the occupiers would not believe him if he spoke to them directly: "If they told me to 'Get out of here, we don't want [you to] speak for us,' would they have believed me? They would have probably thought I was trying to trick them into leaving the park."

The Chief of Kettle Point was clearly worried about the situation. Later that night, he decided to call the National Chief, Ovide Mercredi: "that call about Mr. Harris certainly sparked things off and that's why I felt something bad was going to happen and that's why I called the National Chief."

## **11.21 Mark Wright Stops Residents from Marching to Ipperwash Park**

Upon A/D/S/Sgt. Wright's return to the Forest Detachment after his failed attempt to communicate with the occupiers, Inspector Carson asked A/D/S/Sgt. Wright



to drive to Port Franks. The police had information that local residents and cottagers were planning to gather in the Port Franks area to discuss the park occupation.

Mark Wright was “frustrated” as he drove through Port Franks, trying to find the venue of this meeting. It was about 6:00 p.m., he had received vague instructions about the time and place of this gathering, and he “didn’t want to be at work anymore”; “I wanted to go back to my room and start to prepare for my court appearance the next morning.”

He continued his search for this meeting until he received a call that community members were gathered in the MNR parking lot. A/D/S/Sgt. Wright left Port Franks and drove to the site of this meeting at the Tactical Operations Centre (TOC).

When Mark Wright arrived at the MNR parking lot, he was “shocked” to see a gathering of about thirty to forty men, women, and children. Mayor Fred Thomas was amongst the cottagers and residents from the community.

Mark Wright wore civilian clothes and drove an unmarked police car. He introduced himself to the group and learned they were about to march to the park to express their frustration with the First Nations occupation. This caused him “great concern.” Some community members held signs.

A/D/S/Sgt. Wright tried to dissuade them from marching to the park — it was dangerous and the OPP could not guarantee their safety. He told them that, while it was not illegal for them to march, “it would certainly complicate the situation.” He reassured the community residents that the OPP would remain in the area until the problem was resolved. He explained that ERT units had been assigned various duties in the vicinity of the park, and that the OPP had been “in the park with undercover officers” for some time.

Mark Wright encouraged people to return to their homes. He did not leave the area until he was “absolutely sure the last person who was there was gone.” He “certainly didn’t expect” he “would be walking into that kind of an atmosphere” when he had entered the MNR parking lot that evening. He was relieved when they agreed to halt their march to the park.

A/D/S/Sgt. Wright, who had been up since 5:00 or 6:00 a.m., must have been exhausted. He planned to drive to the Forest Command Post and brief the Incident Commander on this gathering at the MNR parking lot before going off duty. Mark Wright left the MNR parking lot just before 7:30 p.m. and drove to the intersection of East Parkway Drive and Army Camp Road where he came upon eight Aboriginal males standing at the edge of the roadway. This encounter between A/D/S/Sgt. Wright and the First Nations people is described in the following chapter.

## 11.22 Inspector Carson Leaves the Command Post

Before leaving the command post, Inspector Carson briefed Inspector Linton. He discussed the injunction scheduled for the following day in Sarnia at 9:00 a.m. at which A/D/S/Sgt. Wright would give evidence on behalf of the police. He mentioned that videos taken from the helicopters had identified most of the occupiers in the park. At 7:00 a.m. the next day, concrete barriers would be placed at the east end of Ipperwash Beach.

Also discussed was the gunfire heard the previous evening. It could not be established whether it was from an automatic or semi-automatic weapon. Nomex coveralls were en route from Edmonton to Ipperwash, the ASP batons were being distributed to the officers, and the canine units had arrived. Inspector Carson explained to Inspector Linton how to page the TRU in the event the unit was required.

Inspector Carson went off duty at about 7:00 p.m. and went to the private home of friends for dinner in Forest. He had arranged to meet A/D/S/Sgt. Wright later that evening to discuss his evidence at the injunction hearing the following morning in Sarnia. John Carson said, it had “been our position from the outset” and it “continued to be our position” that before the OPP would contemplate any action with regard to the occupation, it was necessary for MNR to obtain a court injunction.

As he left the command post that night, Inspector Carson was “optimistic” — “status quo for the night,” “injunction application tomorrow morning,” “and see what flows from that.” As Inspector Linton assumed the role of Incident Commander and John Carson left the OPP command post, he thought it extremely unlikely that anything significant would happen that evening.

As Inspector Carson drove to his friend’s home in Forest for dinner, it was his expectation that the night of September 6 would be “status quo” — “we would maintain the checkpoints and the patrols,” monitor the area with “night vision” equipment, and “basically sit tight” and “see what happens with the injunction in the morning.”





## SEPTEMBER 6, 1995 — GOVERNMENT MEETINGS TO ADDRESS THE IPPERWASH OCCUPATION

### 12.1 Seeking Direction from the Attorney General

Prior to meeting with Attorney General Harnick to seek direction on the Ipperwash protest, Julie Jai, Acting Legal Director of the Ontario Native Affairs Secretariat (ONAS), briefed Deputy Attorney General Larry Taman in the early morning of September 6. Ministry of the Attorney General (MAG) lawyer Tim McCabe was present.

Ms. Jai explained to Mr. Taman that the legal sub-group had met to discuss options available to the government and had concluded that a regular and not an ex parte injunction should be sought by the Ministry. There was no particular urgency. It was Tim McCabe's view that the government did not have grounds for an ex parte injunction, an injunction without notice to the occupiers.

At the meeting, Ms. Jai alerted the Deputy Attorney General that there were tensions in the Interministerial Committee (IMC) group; Deb Hutton of Premier Harris's office conveyed the message that the government wanted to move quickly, and considered Ipperwash a more urgent matter than some of the other political staff and bureaucrats at the IMC meeting. The OPP, Ms. Jai said, wanted an injunction but were of the view that the protest should be approached cautiously.

It was clear to Ms. Jai that the Deputy Attorney General did not think this was a case for an ex parte injunction. Mr. Taman did not want to take precipitous action and thought that other legal avenues should be explored.

Mr. Taman says he likely discussed with Ms. Jai the meeting that he and the Attorney General had had earlier that morning with Solicitor General Runciman and Deputy Solicitor General Todres — both the Solicitor General and Attorney General were of the view that it was important to stabilize the situation at Ipperwash and that there was no urgency to quickly address this First Nations protest. Risks should not be taken with respect to people's safety. There was also a consensus at the meeting that it was the OPP's responsibility to deal with law enforcement issues that arose at Ipperwash Park.

Mr. Taman and Ms. Jai then met with Attorney General Harnick. The meeting was held in the Legislative Building before 9:30 a.m. Mr. Harnick had received



in advance the ONAS Briefing Note entitled “Criminal and Civil Proceedings to Terminate the Occupation of Ipperwash Park by the ‘Stoney Pointers,’” which discussed civil injunctions as well as criminal charges available to the police.

Ms. Jai recommended to the Attorney General that the government seek a regular injunction with notice to the occupiers at Ipperwash Park, but that it be sought as soon as possible. Ms. Jai explained that the government did not have much information on the specific grievances of the occupiers, other than that they claimed a sacred burial ground existed in Ipperwash Park. Ms. Jai reported that the occupiers fluctuated from ten to forty people and included women and children. It was a peaceful, non-violent protest, there were no visible weapons, and there did not appear to be any immediate risk to public safety. Nor did there appear to be any land claim or outstanding lawsuits in relation to Ipperwash Park. In Ms. Jai’s view, it was important to open a dialogue and communicate with the First Nations people — seeking an *ex parte* injunction ran contrary to that objective.

Ms. Jai reported that the Kettle and Stony Point First Nation was not supportive of the occupation. The Town of Bosanquet was also concerned, and it had issued a press release and was pressuring the province to take action. The municipality was contemplating seeking an injunction with regard to Matheson Drive.

Ms. Jai explained that the OPP wanted to proceed cautiously and did not consider the occupation an urgent situation. The police thought a court injunction would provide them with the legal means to remove the occupiers from the park, if it were necessary.

The Acting Legal Director of ONAS also discussed with the Attorney General the IMC meeting held the previous day. She said members of the IMC agreed that the goal was to have the occupiers leave the park, but the issue was how best to accomplish this objective. Ms. Jai reported that some of the political staff at the meeting said this would be “a test” of the government’s “reaction to Aboriginal emergencies,” and Deb Hutton said the Premier wanted to take an “aggressive approach” to the occupation.

Ms. Jai discussed the irreparable harm test to successfully obtain a court injunction and the need to establish that reasonable steps had been taken to encourage the occupiers to leave the park. She said that if the government applied for an *ex parte* injunction and it was not successful, it “would really tie our hands and make it more difficult to deal not only with this emergency, but with future Aboriginal emergencies.” According to Julie Jai, Attorney General Harnick was receptive to the recommendation and agreed that a regular civil injunction be sought as soon as possible. Charles Harnick thought the occupation should be

approached cautiously, that there should be continuous efforts to communicate with the Stoney Point people, and that the OPP should exercise its discretion in policing the protest and in laying any *Criminal Code* charges it considered appropriate.

The meeting ended. It was Ms. Jai's understanding that the Attorney General's instructions were to seek a regular civil injunction. Ms. Jai left Mr. Harnick's office to chair the IMC meeting scheduled for 9:30 a.m.

## 12.2 The September 6 IMC Meeting

When Julie Jai entered the ONAS boardroom at 9:30 a.m. to chair the IMC meeting on September 6, she felt somewhat more comfortable and had a clearer sense of direction than at the IMC meeting the previous day. Ms. Jai had met early that morning with her Minister, Attorney General Harnick, who had indicated the government would proceed with an "injunction in the normal course."

The September 6 meeting was very tense and the atmosphere was charged. There was "tension in the room from the outset" — "it wasn't something that sort of developed in the way it had in the meeting of September 5." The prime reason for the tension was the "differing views as to the urgency" with which the government had to proceed. Deb Hutton attended the meeting and was described by participants as "extremely forceful," "very assertive in her views," "adamant," and a "very ... major presence."

The IMC meeting had more participants than the previous day. Most of the political staff and civil servants at the September 5 meeting were also present on September 6. Ministry of Natural Resources (MNR) staff Peter Sturdy and Ron Baldwin again participated by teleconference. Others who joined the meeting included Tim McCabe, a senior litigation lawyer with MAG (Crown Law Office — Civil), Scott Hutchinson, a MAG lawyer in the criminal law office, Scott Patrick, an OPP officer seconded to the Solicitor General who reported to Ron Fox, and other MAG and MNR staff. Ms. Jai invited Mr. McCabe because he had significant experience in litigation and, in her view, was the "foremost" government expert in Aboriginal civil litigation.

The IMC meeting began with introductions. Political staff and bureaucrats identified themselves by name, the Ministry with which they were affiliated, and their respective positions. Like the previous IMC meeting, individuals took contemporaneous handwritten notes, the most detailed of which were from Julie Jai, ONAS lawyer Eileen Hipfner, and Anna Prodanou (ONAS, representing her director Janina Korol). Julie Jai prepared a typed version of the minutes later that day.



Ms. Hutton's objective as she walked into the ONAS boardroom that morning was to seek an option that would result in the removal of the occupiers as quickly as possible — "ending the occupation, removal of the occupiers ... was our goal." This was the goal of both the Premier and Deb Hutton. It was her expectation that by the end of the September 6 meeting, she would be able to recommend an option to Premier Harris that would result in the removal of the occupiers in the quickest manner possible.

### *12.2.1 Status Reports from the Ministry of Natural Resources and the Ministry of the Solicitor General*

Status reports at the IMC were provided by Ron Fox from the Solicitor General's office and Peter Sturdy from the Ministry of Natural Resources. Ron Fox considered his role as liaison officer to be a "flow through of information" between the police and the Interministerial Committee.

Mr. Fox had called Inspector Carson at about 7:15 that morning to receive an update on the occupation to be provided to officials at the Solicitor General's office and to the IMC meeting. Some of the matters discussed by Inspector Carson included damage to police cruisers, the piled tables outside the park, the possibility of fires to adjacent homes, and concern with both police and public safety. There was no mention of reports of automatic gunfire. But based on this conversation, it was Mr. Fox's impression that the situation was escalating.

Inspector Carson was aware that Mr. Fox would use this information in "meetings that he would be attending" to provide "input into the process." No restrictions were placed by the OPP Inspector on the information that would be passed on to government officials. Ron Fox said, "The discretion was mine ... in terms of how I would provide that information and what I would do in terms of interpretation." As I discuss in this report, Ron Fox should not have been communicating with Inspector Carson, the Incident Commander at Ipperwash.

Many people at the meeting knew Ron Fox was a police officer seconded to the Solicitor General, that he was a conduit for police information, and that his status reports were based on information received from the OPP at Ipperwash. His assistant, Scott Patrick, described Mr. Fox's function as Special Advisor on First Nations as a liaison for police officers on the ground, whose role was to present facts to the IMC from the police perspective. There was no doubt, said Mr. Patrick, that people at the meeting knew they were police officers. This was confirmed by many of the political staff and civil servants who attended the IMC meeting.

Ms. Hutton claimed, however, that she did not realize Ron Fox was an OPP officer seconded to the Ministry of the Solicitor General, and that she was not aware of his liaison role between the OPP and the government. But she

acknowledged that had she known this information, “it would not have altered” her comments at the IMC meetings.

Although Ron Fox was seconded to the Ministry of the Solicitor General from the OPP, his secondment was different from other government officials who moved from their home Ministry to another provincial Ministry for a period of time. This might have caused some of the confusion concerning his role at the Ministry of the Solicitor General. Ron Fox had not worked in the provincial government prior to this secondment. His work at the Ministry of the Solicitor General was for approximately a year, after which time Ron Fox would return to the OPP. While on secondment to the provincial government, he still had an administrative relationship to a senior police officer at the OPP for such matters as attendance and vacation credits. He also remained a member of the Ontario Provincial Police Association during his secondment, and he continued to be a peace officer within the meaning of the *Police Act*. This was also the case for the secondment of officer Scott Patrick. Deputy Solicitor General Todres believed these seconded positions were important “stepping-stones” in their respective police careers.

Mr. Fox reported to the IMC that Bert Manning was the interim spokesman for the occupiers. Police estimated there were from thirty-five to forty occupiers at Ipperwash Park, but these numbers fluctuated as no barriers existed between the army base and the park. They were contiguous. First Nations people went back and forth between the army camp and the provincial park.

A meeting between the OPP and the occupiers was scheduled for noon that day. The demands of the occupiers continued to remain unknown. However, they claimed the park was their land and that a burial site existed in Ipperwash Park.

Mr. Fox also reported that the previous evening there had been a controlled fire on Army Camp Road. When police responded, beer bottles and stones had been thrown at the officers’ vehicles. There were warrants for the arrest of three people for minor offences. The OPP had aerial surveillance of the Ipperwash area, and there were no sightings of occupiers with firearms. At the arranged noon meeting, the OPP intended to find out the occupiers’ demands, to serve them with the trespass notice, and to ask them to leave the park. Mr. Fox also reported that Chief Tom Bressette and the Council of Kettle and Stony Point First Nation did not support the park occupation.

Peter Sturdy then gave a status report on behalf of MNR. The source of this information was Les Kobayashi, Superintendent of Ipperwash Park. Park buildings had been broken into and were being used by First Nations people. Picnic tables from the park had been piled on the road, Mr. Sturdy said, to block access to the beach. There was heavy equipment in the park, and MNR hoped to obtain more detailed information from the aerial surveillance. MNR staff were being



“peppered with calls” from local residents who expressed “concern, fear, anger,” and “anxiety.”

Mr. Sturdy said someone had heard “automatic gunfire.” To his consternation, the OPP had asked MNR staff to wear bulletproof vests. Mr. Sturdy was clearly anxious about the safety of his staff and persons in the community. Park Superintendent Les Kobayashi had relayed this unverified police information to Mr. Sturdy. Mr. Sturdy did not consider the reports of automatic gunfire to be police operational information when he conveyed this information to the Committee. The conveying of this information demonstrates the reasons why MNR should not have been present in the command post. Neither Mr. Kobayashi nor Mr. Sturdy had the expertise to assess the reliability or significance of the reports of automatic gunfire or to place such reports into the full context of police operations. For example, Inspector Carson had not even mentioned the report of automatic gunfire in his early morning conversation with Ron Fox. Inspector Carson also placed the report in a fuller context when he stressed to Tim McCabe that afternoon that no police officer had been threatened with a firearm.

Ron Fox was surprised to hear this information about automatic gunfire from Mr. Sturdy at the IMC meeting. Mr. Fox left the meeting to confirm this report with the OPP in the Ipperwash area.

Peter Sturdy also said that footage of “Natives” approaching a van with baseball bats and OPP drawing their guns would be televised at noon that day. Mr. Sturdy received this unverified information from Daryl Smith, the MNR Information Services Coordinator in Chatham, while he was participating in the IMC meeting by teleconference. Mr. Sturdy acknowledged at the hearings that it was important for accurate and reliable information to be conveyed to the IMC so that the Committee would not make decisions or put forth recommendations on the basis of speculation or rumour.

In fact, members in attendance at the IMC meeting, such as Eileen Hipfner, had the impression “based on what had occurred at the September 5 meeting ... that Mr. Sturdy’s sources of information were proving not to be particularly reliable.” She said at the hearings: “[C]ertainly my own sense was that on September 5, some of the reports that Peter Sturdy had conveyed to the group had proven to be unfounded” — “once Inspector Fox checked with his own sources ... they were never quite as serious as Mr. Sturdy had suggested.” And at the September 6 IMC meeting, Ms. Hipfner thought that until Mr. Fox verified Mr. Sturdy’s report, she was not going to place “too much faith” in this information. Ms. Jai also thought Mr. Sturdy’s report from “second or third-hand” sources should be verified.

Despite Ms. Hipfner and Ms. Jai’s reservations about the reliability of Mr. Sturdy’s information, Mr. Sturdy’s comment about “automatic gunfire” alarmed

several people at the meeting, particularly political staff. Deb Hutton believed the situation at the park had escalated and that public safety was at risk. The police warrants and the request that MNR staff wear bulletproof vests, “coupled with potential for reports of gunfire were of concern”; “it’s very disturbing to hear that civil servants are being asked to wear bulletproof vests.” The Premier’s Executive Assistant (EA) discerned a heightened sense of anxiety on the part of MNR staff participating at the meeting by teleconference.

Mr. Fox considered it his role to filter police information to the IMC, and he was concerned that other people at the meeting were reporting police information. He thought the information conveyed by MNR staff “increase[d] tension in the room,” and clearly “modif[ied] the dynamic.”

Ron Fox reached Inspector Carson by telephone during the IMC meeting. The OPP Inspector confirmed that there had been reports of gunfire during the night and that he had not mentioned this in his earlier conversation with Mr. Fox that morning. However, the police did not know whether the gunfire was from an automatic firearm. Les Kobayashi had learned about the gunfire at the OPP Command Post meeting the morning of September 6, and had relayed this information “up his chain into the MNR side.” As Inspector Carson said at the hearings, Mr. Kobayashi’s report of “automatic gunfire ... certainly created some anxiety” as it went up the MNR “chain.” Chief Superintendent Coles testified that whether the gunfire was automatic constituted information for “the police to consider” — “not some government think tank.”

In my view, politicians and civil servants at the IMC meeting should not have been privy to this report about automatic gunfire. It was unverified information — the OPP were uncertain whether “automatic” gunfire had been discharged the previous night. This unauthenticated information clearly had an impact on the people at the IMC meeting. It raised their anxiety and propelled some of them to believe that the government should take immediate measures to what they perceived to be an urgent situation.

### *12.2.2 No Negotiations with the Occupiers*

Deb Hutton made it clear to the IMC that the Premier did not want third parties to enter into discussions with the occupiers. Only the OPP and MNR should communicate with the First Nations people:

Premier is firm that at no time should anybody but OPP, MNR be involved in discussions, despite any offers that might be made by third parties (Chief, etc.) because you get into negotiations and we don’t want that.



This comment was perceived by ONAS and other civil servants to limit the range of options that the IMC could contemplate to address the occupation.

Ms. Hutton did not want Chief Tom Bressette to work with the government in attempts to end the occupation. She was concerned that “if Chief Bressette worked with the government [to try] to end this specific situation, that may well put both the Chief and the government in a difficult situation.” The Premier’s EA believed that involving Chief Bressette would confuse or complicate the issue.

Ms. Hutton claimed that she did not know the IMC had the power to appoint a third party to engage in discussions of non-substantive issues with occupiers. The Premier’s EA said she was not aware of the mandate and the powers of the IMC described in the Guidelines for Responding to Aboriginal Emergencies. This was in contrast to political staff, such as Dave Moran, EA to Minister Harnick, who knew the Committee had the power to appoint a facilitator/negotiator to engage in process negotiations.

It was clear to the Chair of the IMC, Julie Jai, and others at the meeting that the Premier remained adamant that the occupation was a law enforcement issue, not a First Nations matter. As Ms. Hutton said, it continued to be the position of Premier Harris that this should be treated as an illegal occupation rather than an Aboriginal issue. The Premier, according to Ms. Hutton, did not want third-party involvement, nor did he support negotiations with the occupiers. It was evident to Ms. Jai that the fact that the occupiers were Aboriginal, that they claimed the land belonged to them, and that a burial site existed in the park, were irrelevant considerations for the government.

### ***12.2.3 Who Will Be the Spokesperson for the Government on the Occupation?***

Uncertainty existed at the IMC as to which Ministry should take the lead in responding to the Aboriginal occupation.

The Ministry of Natural Resources clearly did not want to be at the forefront of the government’s response to the occupation. “MNR views this as a police issue — MNR would prefer to take a back seat at this point,” said Peter Allen, EA to MNR Deputy Minister Vrancart. The “change in tone” by MNR officials was discernible from the previous IMC meeting. They seemed somewhat “over their heads” and were reluctant to assume a lead role in responding to the Ipperwash Park occupation.

Jeff Bangs, EA to Minister Hodgson, added, “This is quickly spiralling out of MNR’s hands.” “The way things are escalating, the Minister doesn’t want to carry this, especially with the threat to nearby lands.” In fact, MNR was considering

withdrawing its staff from the Ipperwash area for safety reasons. Mr. Bangs took the position that the OPP should be the spokesperson, not the Ministry of Natural Resources.

Solicitor General Runciman was also reluctant to take an active role in the occupation. It is inappropriate, stressed his EA Kathryn Hunt, for the Ministry of the Solicitor General to be involved in the day-to-day operations of the OPP. Separation between the Solicitor General and the police was stressed. Ms. Hunt felt it was important to raise this with the political staff, particularly those who were vocal at the IMC meeting. Ms. Hunt did not think Solicitor General Runciman should be designated as the government spokesperson for the occupation. The Solicitor General, however, was the Minister with ultimate responsibility for the OPP. His role was to ensure that relations between the police and government respected the operational independence of the OPP. Solicitor General Runciman conducted himself based on his understanding of his role in 1995, and he considered himself an observer throughout the Ipperwash occupation. He believed that a clear demarcation existed between policy making, which was the responsibility of the executive arm of government, and operational decisions, which was the responsibility of the police.<sup>1</sup> As I discuss in detail in Part II of this report, this view of the role of the Solicitor General is too restrictive.

But Dave Moran, EA to Attorney General Harnick, argued that “[we] can’t have OPP speak on behalf [of the] government.” He made it clear that with respect to “public carriage of the issue, we are open to direction from the centre.” “The centre” was a term used by the Harris Government to describe the Premier’s office.

Ms. Hutton responded: “We want to be seen as having control over this — so Ministers can’t duck if scrummed — and the Premier is not averse to this being [seen] as a provincial government action.” IMC members understood this to mean the Premier wanted to be seen by the public as having control of the situation, that he desired a quick resolution to the occupation, and that he was not averse to being visible on this issue. It seemed to Ms. Hipfner that the Premier would be pleased to be seen having control of the situation rather than it being left to be handled by the local police or MNR. Ms. Hipfner considered this “highly unusual” — it “surprised” her because generally “[M]inisters are advised to stay clear of any situation involving the police.”

Ms. Hipfner decided to raise the Oka situation in the context of these discussions. She understood police operations had been directed by bureaucrats

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<sup>1</sup> Ministerial Control and the Ontario Provincial Police: A Discussion Paper prepared by Anne McChesney in the legal services branch of the Ministry of the Solicitor General, 1991.



in Quebec City and may have contributed to the tragic death of Corporal Lemay. Ms. Hipfner made the point that, apart from the impropriety of government purporting to direct police operations, it was also not advisable because government officials did not understand police operations or details of the situation “on the ground.” Such direction from government could compromise the safety of both the police and the occupiers. I agree with Ms. Hipfner that governmental direction of police operations has the potential to threaten the safety of both the public and the police and should be avoided.

Ron Fox stressed that the Committee could “provide general direction” but could not “direct how instructions to police are operationalized.” In this comment, Inspector Fox demonstrated a sounder understanding of the appropriate roles of the government and the police. He was aware that, although it is legitimate for the government to provide policy direction to the police, it is the role of the police to carry out their law enforcement responsibilities. The complex topic of police–government relations and the appropriate role of ministerial responsibility for policy and police responsibility for police operations will be discussed in greater detail in Part II of the report.

#### *12.2.4 An Injunction — With or Without Notice to the Occupiers?*

Julie Jai reported to the IMC that she had met with Attorney General Harnick and Deputy Attorney General Taman. The direction from the Attorney General was to apply for a civil injunction as soon as possible. Public safety, she said, including the safety of the OPP officers, was paramount. It was within the discretion of the police to decide whether to lay charges under the *Criminal Code*.

Tim McCabe, senior civil litigator at MAG, described to the Committee, many of whom had little or no background in injunctions, the different types of injunctions (ordinary/with notice and ex parte/without notice), as well as the court application process.

Mr. McCabe explained that the park occupation was not suitable for an ex parte injunction and would not likely succeed in court. The park was empty and there was no direct evidence that the occupiers were armed. The threshold for an ex parte injunction was high; it was necessary to establish that the matter was of such urgency that it did not warrant giving notice. Mr. McCabe suggested an application for an ordinary injunction be made with a request to the court for an abridgement of the three-day notice period. Elizabeth Christie would check on the availability of a judge in Sarnia. In Mr. McCabe’s view, the “best-case scenario” was Friday, September 8. MAG lawyers needed to prepare court materials which would include documentation that the province had title to the land in Ipperwash Park.

Ms. Hutton was not satisfied with this time frame and said: “Premier feels the longer they occupy it, the more support they’ll get – he wants them out in a day or two.” This placed significant pressure on the Committee. It was evident from Ms. Hutton’s remarks that the Premier wanted to deal with the occupation as soon as possible. Ms. Hutton was exasperated with the legal advice provided by Ms. Jai and Mr. McCabe. Mr. McCabe replied that a quick resolution was to initiate proceedings under the *Criminal Code*. This was a reference to the laying of criminal charges; law enforcement is the responsibility of the police and lies at the core of police independence from government.

Ron Fox cautioned against such a law enforcement approach. He advocated a measured, slower, longer-term response, and supported the injunction process. “Injunction is preferable,” in a “dispute over land in a closed provincial park,” “imprudent to rush in,” “need to look at long-term solution,” “we need considered action,” he said. “Stoney Pointers” are asserting colour of right<sup>2</sup> and that “makes it different from someone trespassing” in the park. Mr. Fox stressed the preferred police approach was an application for an injunction.

It was made clear that even if the injunction application was successful, this did not ensure the First Nations people would leave the park. If the occupiers refused to comply, it would be necessary to return to court to initiate contempt proceedings.

Mr. McCabe asked if the names of any of the occupiers were known. Ron Fox replied that police had a list of some of the people occupying the park. When the MAG lawyer asked if Chief Tom Bressette would be willing to provide an affidavit in support of the injunction application, Ms. Hutton made it clear that “we’d like him to be supporting our efforts, but independently.”

In my view, a motion for an injunction with notice could have acted as a catalyst to stimulate dialogue with the occupiers. But this was not discussed as a rationale for proceeding with the regular civil injunction. The primary reason for not proceeding ex parte was the likelihood of being unsuccessful on an application without notice. It is most unfortunate that the prospect of enhancing communications with the occupiers was not canvassed at the IMC meeting in the context of the injunction discussions.

### ***12.2.5 Possibility of First Nations Burial Grounds in the Park***

ONAS lawyer Dave Carson discussed at the IMC his research on burial grounds; “it is mere conjecture that there are human remains.” Even if human remains

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2 A colour of right defence may be available in the context of an Aboriginal occupation or protest where the accused has an honest belief that the land belongs to First Nations people.



were found in the park, title would continue to reside with the Ontario government. The statutory requirements under the *Heritage Act* and the *Cemeteries Act* were briefly discussed, including notice to the local Band Council of “unapproved” Aboriginal cemeteries.

What was central for Deb Hutton was that the possible existence of burial grounds in the park would not affect the province’s title to the land. The Premier’s EA does not “recall thinking” that if there was an issue about burial grounds, there might be strong feelings among the occupiers that may not be connected to the legal title of the land. Her focus in this occupation was the province’s ownership of the land and the statutory provisions of the *Cemeteries Act*, rather than cultural values and personal attachments of the First Nations people to the human remains of their ancestors in the park. Regrettably, Ms. Hutton had little experience in Aboriginal issues, nor did she have a sound understanding of Aboriginal culture, section 35 of the Constitution, or concepts such as colour of right.

Ms. Hutton took the position that there was insufficient evidence of a burial ground in the park. There was lack of proof that the motivating reasons for the occupation were these burial grounds and that these sacred sites had not been protected or respected, and insufficient evidence that the occupiers were frustrated with the inaction of the government over many years. Ms. Hutton agreed that if on September 5 or 6 there had been “ongoing discussion” or evidence “of an ongoing sense of strong feeling and perhaps in that sense, frustration with the Ontario government about this specific burial ground, that would have been a factor in my thinking.”

In my view, Ms. Hutton’s comments at the IMC meeting, her focus on Ontario’s title to the park, and her characterization of the occupation as a law enforcement issue impeded “ongoing discussion” of the burial grounds and the cultural values and attachments of First Nations people to what they claimed were the remains of their ancestors. There was information at both provincial and federal government levels of First Nations concerns for the protection of these burial sites. Had more effort been exerted and more concern been attached by political staff and civil servants to this issue, and had there been due diligence, government officials would have realized that documents stored for decades in the basement of the Whitney Block showed that First Nations people had voiced their concerns about these burial grounds. Instead, the government did not attach sufficient importance to the existence of these sacred sites or to the spiritual and cultural attachment of the First Nations people to these burial grounds.

Daryl Smith, the MNR Information Services Coordinator in Chatham, who e-mailed Peter Study during the IMC meeting about television footage of “Natives” with baseball bats and police with guns, is the same person who in the 1970s found the burial ground documents in the basement of the Whitney Block of

the Ontario government buildings. Mr. Smith had dictated information from a 1937 federal document on the “Indians” of “Kettle and Stoney [*sic*] Point Band” who were “much concerned in the preservation of the old Indian Cemetery” located “within the boundary now being developed as a Park.” This explains why in January 1975, both the MNR District Office in Chatham and the MNR Superintendent in Ipperwash had information on these burial grounds in Ipperwash Park. Yet this important information was not conveyed by the MNR official to Mr. Sturdy, who attended the August 2, September 5, and September 6 IMC meetings on the occupation of First Nations people at Ipperwash of the army camp and the provincial park.

Another missed opportunity. This information substantiated the assertion of Stoney Point people that a burial ground, a sacred site, existed in Ipperwash Park. First Nations people had brought this to the attention of the federal government fifty-eight years earlier in 1937. And the provincial government had this information in 1975, twenty years before the Ipperwash occupation. The failure in communication in the Ministry of Natural Resources between Mr. Smith and Mr. Sturdy regarding the assertion of this burial site in Ipperwash Park by First Nations people is most unfortunate.

### *12.2.6 Tension in the Local Community*

Defusing tension in the Ipperwash area, particularly of the non-Native community, was identified as a “critical issue” at the IMC meeting. Neither local MPP Marcel Beaubien nor the Mayor of Bosanquet were considered suitable to discharge this task. Mr. Beaubien’s acts were perceived to raise anxiety rather than to calm the local people. In a press release, Bosanquet’s Mayor Fred Thomas described the park occupation as a “reign of terror.”

Dave Moran suggested that a list be compiled of individuals and groups who needed to be “calmed down.” At the hearings, he acknowledged that compiling such a list of individuals and organizations in the local community had not been contemplated at the previous IMC meetings on August 2 or September 5, and it would have been helpful to have had a prepared list when IMC members met on September 6. Mr. Moran assumed at the August 2 meeting, “I guess incorrectly,” that steps would be taken to defuse tension in the Ipperwash area after the army camp occupation.

In my view, it would have been both helpful and advisable to have had a communication plan in place well in advance of September 6. I also think it is important for community leaders to know which Ministry to contact in an occupation or other local crisis. Such measures would have fostered a two-way dialogue, which may have defused the anxieties and concerns of the Mayor, local



municipal and provincial politicians, as well as the residents and cottagers in the Ipperwash area. In addition, there ought to have been regular briefings by the government of stakeholders.

### *12.2.7 Heated Exchange — Separation of Government from Police Operations*

A “heated” discussion ensued on the issue of government direction to the police. Deb Hutton felt MNR, as property owner, could ask the OPP to remove the occupiers. MAG lawyer Scott Hutchinson made it clear that, although it was appropriate for the government to “ask” the police to remove the occupiers, “you can’t insist or demand that they be removed.” The province is in no better position than any other landowner. Mr. Hutchinson stressed that the government must remain at arm’s length from the OPP and could not direct or demand that the police take any action. “My difficulty,” Deb Hutton replied, “is not wanting to give political direction to the OPP.” Ms. Hutton suggested a government communication message could be that MNR has formally asked the police to remove the occupiers.

From this discussion, Ms. Hutton understood that the government should not give political direction to the OPP, but it was evident to Ms. Hipfner that Ms. Hutton “felt boxed in by the advice that she had been given.”

Anna Prodanou as well as political staff noticed Ms. Hutton’s frustration at the IMC meeting. Ms. Hutton was also impatient and agitated at the pace at which the Committee addressed the issues — asking questions, examining the issues from different angles, “basically talking about it as opposed to doing something.”

The Committee developed messages for the Ministers to convey to the public:

1. The Ministry of the Attorney General has been instructed to seek an injunction asap.
2. Police have been asked to remove the occupiers from the park.
3. Public safety and the removal of the trespassers from the park are the key objectives.

Peter Allen made it clear that although Minister Hodgson would take the lead as spokesperson, the Minister was not prepared to discuss any matters concerning the injunction. Premier Harris, Deb Hutton said, was willing to take the lead on this issue. She hesitated and then added, we need to “take this back to Cabinet ... but I suspect the Premier will be pleased to take lead.”

To ONAS lawyer Eileen Hipfner, Ms. Hutton's comment was "very surprising." She questioned why a Minister of the Crown would want to "appear to be taking the lead" in what she perceived was a policing issue. Ms. Hipfner further said: "[T]his comment interested me as well, because throughout both of the meetings, Ms. Hutton had been referring to ... the Premier wants this, the Premier says this ... very confidently conveying to us messages apparently from the Premier."

There was great confusion amongst members of the IMC about the appropriate role of the police and the government regarding the First Nations occupation.

To people who attended the IMC meeting, Deb Hutton clearly spoke for the Premier. Shelley Spiegel, who had served as political staff and a civil servant in the provincial government, was very attuned to the manner of communication and cues when political staff spoke at meetings. She and others were convinced the Premier's EA was conveying the Premier's views.

At the hearings, Ms. Hutton confirmed she "would not have said" the Premier would be willing to take the lead on this issue "if [she] didn't feel that that was the case." At no time did the Premier subsequently indicate to his EA that this was not the case.

Ms. Hutton considered it her position to forcefully put forth the views of the Premier. She described herself as a no-nonsense, results-oriented person. When she made representations on behalf of the Premier, she was confident she was putting forth his views.

Michael Harris confirmed that Ms. Hutton had the authority to speak on his behalf and on behalf of the Premier's office at the IMC meetings. In his opinion, Ms. Hutton fairly reflected his views. Michael Harris described Deb Hutton as direct and forthright, a person who expressed her views without hesitation. But neither Deb Hutton nor Michael Harris fully appreciated at that time the power of the Premier and the Premier's office. They were a new government and did not understand that Ms. Hutton's forceful personality and her strong statements made on behalf of the Premier at the IMC meetings had the effect of halting the exchange of important ideas and recommendations by other members of the Committee who very much wanted the occupation at Ipperwash to be resolved peacefully.

### ***12.2.8 Facilitator Not Appointed: Reliance on the OPP as the "Communicator" — Another Missed Opportunity***

Again at the September 6 meeting, IMC members did not recommend the appointment of a facilitator or a negotiator to initiate and sustain a dialogue with the



First Nations occupiers. As previously mentioned, the IMC had discretionary powers to appoint a facilitator/negotiator, to agree to a negotiating agenda with the parties, to make decisions on third-party intervention, and to involve the Indian Commission of Ontario. Clearly, appointing a negotiator would protract the occupation and was inconsistent with the government's desire to remove the occupiers as soon as possible. It was also inconsistent with the policy decision of the government not to enter into substantive negotiations with the occupiers.

Deb Hutton from the Premier's office made it abundantly clear it was the government's position that the occupiers be removed and that there be no negotiations. Ms. Hutton believed it was important that there be no public perception that the government was working with the First Nations occupiers — this “would have signalled that there was some form of negotiation ... before the occupation ended.” Ms. Hutton made it clear that the “Premier didn't want this viewed as a Native rights issue.” Sending someone from ONAS to negotiate with the “Stoney Pointers” might be construed as giving the occupiers legitimacy in the context of an Aboriginal issue. The Premier's EA made it clear the government did not want this.

There appeared to be confusion, particularly on the part of political staff such as Ms. Hutton, between negotiation and front-end communication with the occupiers. OPP communication with the occupiers did not mean the police were entering into substantive negotiations with the First Nations people. It was important for political staff to understand that, although it would be inappropriate for police to try to negotiate a land claim or a burial site issue, it was important for the OPP and others to communicate with the occupiers, to open lines of communication to try to end the blockade, and to preserve public safety. Indeed, a strict rule that the OPP could not talk to the occupiers would be an interference with the ability of the police to decide the best means to discharge its operational responsibilities.

Communication is an essential component of building trust between the police and First Nations people. As Mr. Fox said, it is important in any kind of conflict situation to keep the lines of communication open, “both speaking and listening.” Another way of building trust is to try to understand the other party's interests, to display patience, and to let the events unfold. Establishing trust was particularly acute, given the perception of First Nations people that they have been subjected to injustice for many generations.

Given that the government wanted to treat this solely as an illegal occupation, the decision was made to have the OPP on the ground serve as the communicator. A meeting with the occupiers had been scheduled for noon on September 6, and Julie Jai and others were hopeful that Inspector Carson and the OPP officers would be able to fulfill that role.

Process negotiations ought to begin quickly after an occupation, and as Ms. Jai acknowledged, “I do think that we should have appointed a negotiator early on.” This did not happen. Instead, Ipperwash Park was occupied on September 4, and on September 6, the IMC was “hoping” the OPP could initiate a dialogue with the occupiers and find out their demands. Ms. Jai agreed it was questionable whether the OPP could secure the trust necessary to build a relationship with the occupiers, given some unpleasant exchanges and altercations between the OPP and the occupiers that had occurred over the past few days, as well as OPP warrants for the arrest of three occupiers.

Because no facilitator/negotiator was appointed, the IMC did not have a communication strategy with the occupiers or a person whose role was to negotiate with the First Nations people. As a result, the IMC placed great importance on the OPP meeting arranged for noon that day. When this meeting did not take place, the opportunity to communicate with the occupiers, to try to build a trust relationship and determine their demands and sources of their discontent, was lost. The Chair of the IMC and Acting Legal Director of ONAS said, “[W]e were relying on ... the meeting, and when it didn’t take place, we then lost the opportunity to gain valuable information.” Ms. Jai further commented: “[H]ad there been somebody in place whose job was to communicate and to be a facilitator or negotiator, I would have expected that person to persevere beyond one cancelled meeting.” The “whole time that this incident was occurring,” there was no clear communication from the occupiers of what they wanted and what their concerns were. Missed opportunities.

Ms. Jai said it is “really important to have open communication about what [the] concerns and grievances are because there are many ways of settling and resolving these issues that do not require resorting to direct action or the use of force.” I agree. As I have said, the failure in communication with the occupiers undoubtedly contributed to the tragedy on the night of September 6.

In my view, the IMC should have appointed a facilitator/negotiator at the beginning of the occupation. This would have given the government valuable information regarding the frustrations, concerns, and demands of the occupiers. An essential component to a peaceful resolution of the protest was communication between the government and First Nations people. A negotiator could also have facilitated communication between the police and the occupiers. As Ms. Jai said retrospectively, the facilitator could serve as a “go-between” for the occupiers and the police, which would have avoided misunderstandings that could result in violence. At the same time, the appointment of a facilitator may have been considered contrary to Ms. Hutton’s statement that the Premier did not want third parties other than the OPP and MNR involved in discussions or negotiations with the occupiers. The government’s decision not to appoint a third-party



facilitator/negotiator at the beginning of the occupation was a decision for the elected government, but it was a decision that had the consequence of lessening the chance for a peaceful resolution of the occupation.

### *12.2.9 Frustrations and Concerns of the IMC Chair*

Chairing the IMC meeting was difficult for Ms. Jai for several reasons. First, the size of the meeting made it “very difficult to manage that large, unwieldy group of people.” It was also difficult to work in a “consensus-based way” with representatives from different Ministries — there were many conflicting views. She worked hard at this meeting to “try to pull together a consensus, or at least what looked like a consensus on the surface.”

Another problem was that the role of ONAS at these meetings was unclear. Because ONAS was the Chair, it was difficult to put forward its point of view. Ms. Jai said, “I was chairing the meeting and we had a coordinating role within government, so we were trying to bring things together and it was not so clear what our voice was or who had the ultimate sort of decision-making authority.”

The separation of the government from police operational decisions needed to be reinforced at the IMC meeting. From the questions and comments made by political staff such as Ms. Hutton, it was evident that some people thought the government might have the ability to direct the police to take particular actions. As Ms. Jai said, everybody around the table did not have the same understanding at the beginning of the meeting that it was inappropriate for government to direct police operations. In addition, MNR staff conveyed some police operational information to participants at the IMC meetings. Clearly, both political staff and civil servants need to receive training and briefings on the importance of the separation of government from police operational decisions.

The inclusion of political staff on the IMC was also problematic. There was a “lack of clarity as to how decisions were made or who was responsible for various things.” There was also, said Julie Jai, the risk of the perception that political staff had “inappropriate influence on civil servants.”

As I discuss in Chapter 20, the Interministerial Committee on Aboriginal Emergencies was restructured the next day. But by this time, Dudley George was no longer alive. He died on the night of September 6 from gunshots fired by the OPP.

It is also worth noting that Ms. Jai had discussions with Ron Fox in August before the IMC meeting as to whether the police should be connected to the IMC meeting by telephone. This was considered a “grey area.” No guidelines stipulated that the police “shouldn’t be connected,” and in fact Ms. Jai said, “they had been

connected in previous meetings.” As the Chair of the IMC acknowledged, this issue lacked clarity and there was “potentially some room for improvement.”

It is important for politicians and bureaucrats to understand that police involved in an operation should not participate in meetings such as the IMC. They should receive training on the appropriate roles of police and government, the fundamental principle of police independence, and the responsibility of the police for law enforcement. As I discuss in Part II of this report, any policy direction from the government to the police should be made in a transparent manner in order to promote accountability. Policy directions should go through the Ministry responsible for the OPP, and the chain of command within the OPP.

### *12.2.10 Conclusions Reached by the IMC Committee*

At the end of the meeting, it was the understanding of IMC members that: (1) the goal was to remove the occupiers from the park as soon as possible; (2) public safety was paramount; and (3) the Crown Law Office — Civil would proceed expeditiously to obtain an injunction. Members were to take these recommendations to their respective Ministers. New information was to be communicated to the Chair, and Ms. Jai would keep IMC members informed of any new developments.

After the IMC meeting formally ended and people were collecting their material to leave the ONAS boardroom, Eileen Hipfner heard remarks from Deb Hutton that made it clear she considered the meeting “useless”: “The room was thinning out and she said to a member of political staff, but within my earshot, and loudly enough that I actually believe the comment [was] intended for my benefit ... ‘This is the most useless meeting I have ever attended. It was a complete waste of time.’ And I remember that because it stung.”

Eileen Hipfner was not the only person who heard Ms. Hutton’s remarks. Anna Prodanou has a clear memory of the statement: “It really stuck in my mind because at that time we were all looking for signals from the government as to what our role would be at ONAS.” Ms. Hutton’s comments saddened Ms. Prodanou: “We knew that that role might be changing. We were looking for signals and to have the work of the Committee dismissed so casually was to me a signal and a very disappointing one.”

Following the meeting, Anna Prodanou walked back with Deb Hutton to their offices. The Premier’s EA continued to express her “frustration and displeasure with the Interministerial Committee.”

Jeff Bangs, EA to Minister Hodgson, did not share the view that the IMC meetings were a waste of time but rather considered them useful information



gathering. But according to Mr. Bangs, Ms. Hutton had made it clear at the end of the IMC meeting that they “would not be having another meeting of this nature, and [they] didn’t.” And, as previously mentioned, the Interministerial Committee was restructured the following day.

When Committee members left the September 6 meeting at 11:45 a.m., they believed the government lawyers were preparing an application for an ordinary injunction, not an *ex parte* injunction. But instructions to lawyers Tim McCabe and Elizabeth Christie changed that afternoon. When Julie Jai prepared the minutes of the September 6 IMC meeting later that day, she inserted the following:

*[Note: Following the meeting, Cabinet directed MAG lawyers to apply immediately for an ex parte injunction. Tim McCabe, Elizabeth Christie and Leith Hunter are preparing the application and compiling the supporting documentation.] (emphasis added)*

Why did the provincial government decide to seek an injunction without notice to the occupiers? Who gave these instructions and why?

### **12.3 “AG Instructed by P That He Desires Removal Within 24 Hours”**

There was inconsistency in the evidence of Attorney General Harnick and the Deputy Attorney General regarding instructions from the Premier on September 6 on how the government would approach the Ipperwash occupation.

Deputy Attorney General Taman testified that on the morning of September 6, Attorney General Harnick told him that the Premier wanted an injunction immediately and the occupiers out of the park within twenty-four hours. The conversation took place before the Cabinet meeting at 10:00 a.m. No particular type of injunction was mentioned. Inscribed in Mr. Taman’s notes that morning were the following words: “AG instructed by P that he desires removal within 24 hours — instruction to seek injunction.”

Mr. Taman committed this to writing in his daybook because he considered the instruction very significant — he recognized it was important and wanted a written record of this direction.

Mr. Taman quickly understood that Premier Harris’s approach was different from the slow, cautious approach subscribed to by Attorney General Harnick and Solicitor General Runciman. Mr. Taman also realized that MAG lawyers were to immediately seek an injunction. But in his view, the enforcement of the injunction and the removal of the occupiers fell within the discretion of the police.

Charles Harnick denied that this conversation took place between him and his Deputy Attorney General. Mr. Harnick testified that he was never instructed by the Premier and, in fact, had no contact with the Premier or his staff on the morning of September 6 before Cabinet. The former Attorney General also asserted that he had no contact with Larry Taman at that time.

Michael Harris also had no recollection of speaking with Attorney General Harnick on the morning of September 6 about the Ipperwash occupation. The former Premier denied instructing the Attorney General or any government official that he wanted the occupiers out of the park within twenty-four hours.

After listening to the evidence and analyzing the testimony of various witnesses, I believe that Attorney General Harnick did have a discussion with Larry Taman on the morning of September 6. Clearly the directions had changed in the mind of the Deputy Attorney General as a result of this conversation, and Larry Taman committed these new instructions to writing in his daybook. The Premier wanted an injunction to be sought immediately, he wanted the First Nations occupiers out of Ipperwash Park within twenty-four hours, and he wanted the situation resolved quickly. MAG lawyers and the Acting Legal Director of ONAS were soon told the government's directions had changed. It is inconceivable to me that the Deputy Attorney General would have written this explicit statement in his daybook if it never occurred, and I believe Mr. Harnick is either mistaken or has forgotten.

As I discuss below, MAG lawyer Elizabeth Christie had a conversation with Larry Taman in a hallway. The Deputy Attorney General informed her that the government had decided to quickly resolve the Ipperwash Park occupation, and she was instructed to immediately seek an injunction. She relayed these new instructions to her senior lawyer, Tim McCabe, and the government litigators began to prepare an ex parte injunction application. So much changed as a result of this conversation that it simply is inconceivable that the conversation between Attorney General Harnick and Deputy Attorney Taman did not occur.

It was also Ms. Jai's understanding that the direction had changed and the government was now seeking an ex parte injunction. As mentioned, she added to the IMC minutes that MAG lawyers had been instructed to apply immediately for an ex parte injunction, and that Tim McCabe, Elizabeth Christie, and Leith Hunter were preparing the application. The Acting Legal Director of ONAS was both "surprised and disappointed." She thought it was important to serve notice on the First Nations people and provide them with an "opportunity for dialogue." She also thought it was unlikely the ex parte application would be successful.

Although it was legitimate for the Premier or other politicians to take the position that it considered the occupiers trespassers, that it wanted the occupiers



out of the park as quickly as possible, and that it would seek an *ex parte* injunction without notice to the First Nations people, it was inappropriate to place a twenty-four-hour time limit on the removal of the occupiers from the park.

It is inappropriate for the government to enter the law enforcement domain of the police. Law enforcement properly falls within the responsibility of the police. To maintain police independence, the government cannot direct when and how to enforce the law. Neither the Premier, the responsible Minister, nor anyone in government should attempt to specify a time period, such as twenty-four hours, for the occupiers to be removed from the park. Whether and when arrests will be made, and the manner in which they will be executed, are for the police to decide. As I discuss in detail in Part II of this report on police–government relations, this is fundamental to preserving police independence.

## 12.4 The “Dining Room” Meeting

A twenty-minute meeting at the Ontario legislative building attended by the Premier, Ministers, and their staff, has been a subject of controversy. This meeting was held on September 6, 1995, the day Dudley George was shot. Who initiated the “dining room” meeting, what was its purpose, who attended, and why were seconded OPP officers present? Did politicians attempt to direct the police operations at Ipperwash? Were offensive and derogatory statements made about the Aboriginal occupiers? What conclusions were reached at the end of the meeting on how the government would address the occupation? These are some of the questions raised in the eleven years since Dudley George’s death.

The dining room meeting took place before noon after the formal Cabinet meeting. The Ipperwash occupation was not on the Cabinet agenda, nor was it a focus of discussion. It was at Cabinet that Premier Harris informed Solicitor General Runciman and Attorney General Harnick there would be a brief meeting to address the occupation in a room near Cabinet chambers, known as the “dining room.” Solicitor General Runciman thought it was “unusual” that this issue was not discussed within the confines of the Cabinet meeting.

The Minister of Natural Resources, Chris Hodgson, was not present at Cabinet that morning. He did not want to be the government spokesperson on the Ipperwash protest and decided not to attend Cabinet to avoid the media scrum that generally occurs at this time: “I was not going to be the spokesperson on this issue” because “it was not my issue.”

What was also unusual, in my view, is that several people claimed they did not know who initiated the meeting or who summoned political staff and civil servants to the dining room at Queen’s Park. This included the Premier and his Executive Assistant, Deb Hutton. Premier Harris denied it was his decision to convene this

meeting. He claimed he did not know who made this decision, nor could he recall who informed him that the dining room meeting would take place after Cabinet. He surmised that his Executive Assistant might have conveyed this information to him. But Ms. Hutton said she could not remember the circumstances under which this meeting was called.

This differed from the recollection of senior civil servants. Mr. Vrancart, Deputy Minister of Natural Resources, was asked by Rita Burak, Secretary of Cabinet, to attend the meeting with the Premier. It was the recollection of Deputy Attorney General Taman that the dining room meeting was organized by the Premier's office at the request of Premier Harris. Solicitor General Runciman had a similar recollection. And Jeff Bangs, Minister Hodgson's EA, said the Premier's staff "certainly asked us to be there."

It seems clear, despite the uncertainty and lack of recall of the Premier and his EA Deb Hutton, that the Premier's office convened this meeting of Ministers, political staff, and civil servants in the dining room at Queen's Park. It was the Premier and his office who had the authority to call this meeting.

What I also find unfortunate is that there are no notes of this meeting. This contrasts with the copious notes taken at the IMC meeting earlier that morning. Deputy Minister Vrancart assumed that all of the Ministers' executive assistants would record the discussion in the dining room that day. Yet the executive assistants of the Attorney General, the Solicitor General, and the Minister of Natural Resources either did not take notes or notes they made were not retained. In Part II of my report, I stress the importance of transparency in order to promote accountability and public confidence in police – government relations. The dining room meeting was woefully lacking in transparency. This has led to continued suspicions and uncertainty about what actually happened at this meeting.

This meeting took place in a small room, approximately 25 to 30 feet in length and 18 to 20 feet wide. A long, rectangular dining room or boardroom-style table with chairs was in the middle. Additional chairs were placed along the perimeter of the room, as well as a credenza and a desk. The dining room was in close proximity to Cabinet chambers and next to the Premier's office.

People at the meeting included Premier Harris, Attorney General Harnick, Solicitor General Runciman, Minister of Natural Resources Hodgson, and their respective executive assistants and Deputy Ministers. Seated at the dining room table were Premier Harris with Ms. Hutton next to him, the three Ministers, and their Deputy Ministers. Political staff such as Jeff Bangs, Dave Moran, and Kathryn Hunt sat in the chairs on the perimeter of the room.

The Solicitor General recalls that Premier Harris "just sat on the arm of his chair" throughout the brief meeting; he was elevated and "didn't sit down." Attendees, including Deputy Solicitor General Todres, said the Premier chaired



the meeting. This was the first private meeting with the Premier for the Deputy Solicitor General and others. She described the meeting as “highly unusual.” In her many years in various senior civil service positions, Dr. Todres had seldom, if at all, been called to a meeting of this nature.

Although Premier Harris claimed the purpose of this meeting was to seek a “consensus” and for him to be briefed on the current status of the occupation, participants did not understand that this was the reason the meeting had been called. Deputy Attorney General Taman and others thought its purpose was “to make sure that everybody understood what the Premier’s view was,” and to ensure that the public servants clearly understood the government’s expectations. It was to emphasize that there would not be a “go-slow” approach as advocated by some — the government wanted quicker, more aggressive action. A consensus was not sought.

#### *12.4.1 Offensive Comments Heard by Attorney General Harnick*

Attorney General Charles Harnick was one of the last people to arrive at the meeting. The Ministers and Deputy Ministers were seated at the table when he entered the dining room. Mr. Harnick testified that when he took his seat, he heard the Premier say in a loud voice: “I want the fucking Indians out of the park.” He testified that there was “complete silence” and then in a “calm voice,” Premier Harris said that once the occupiers were in the park, they could not be removed; “his demeanour changed” and he became quiet.

The Attorney General was “stunned” by the Premier’s “insensitive and inappropriate” remark. It was evident to Mr. Harnick that the Premier knew his comment was offensive; “when his demeanour changed, that was a signal, a very strong signal, that he understood that that was the wrong thing to have said.”

The former Attorney General testified that he was relieved when the Premier changed his tone and seemed resigned that the First Nations people could not be immediately removed from the provincial park. Mr. Harnick was initially worried that the Premier might oppose an injunction as a means of resolving the occupation. The Premier’s change in demeanour was a relief to the Attorney General, as it appeared that Mr. Harris might be prepared to consider an injunction application by the government.

Mr. Harnick believed the Premier made this comment because he was frustrated with the occupation, not because of any animosity he had toward First Nations people. Mr. Harris realized he had “made a mistake” after making the offensive remark.

Mr. Harnick remained steadfast in his certainty that the Premier made this statement. Although his Deputy did not recall the “crude” remark, Mr. Taman

said, “[T]here was no mistaking the Premier’s intention”; the Premier firmly thought that the First Nations people should be removed from the park. “[I]t was clear that he thought this should be dealt with swiftly.” Other people at the meeting also testified that they did not recall the Premier saying these offensive words.

Mr. Harris agreed that when he entered the dining room meeting, his objective was to end the occupation as quickly as possible, and he claimed the people at the dining room meeting largely shared this view. But as we have seen, Deputy Ministers, other senior civil servants, and some political staff clearly subscribed to a “go-slow” approach as a means of achieving a peaceful resolution of the occupation.

Mr. Harris denied he uttered the words, “I want the fucking Indians out of the park,” or “[G]et those fucking Indians out of the park and use guns if you have to.” When presented with these statements at the Inquiry, he said: “I absolutely did not say that or words to those effect or use that adjective at any time during this meeting.”

The former Premier claimed he is “certain” he has “never uttered” the phrase “the fucking Indians,” at any time. Nor did any members of his government, to his recollection, make such comments on September 4, 5, 6, or 7, 1995. Mr. Harris said at the hearings that he considered “I want the fucking Indians out of the park” a racist statement.

The former Premier has no knowledge of any bias Charles Harnick has against him, nor could he think of any reason the former Attorney General would seek to fabricate such a statement.

But Mr. Harris acknowledged that, leaving aside the expletive, he did communicate to the people at the dining room meeting that he wanted the First Nations people out of the park. In the Premier’s view, it was necessary to deal with this urgent issue as promptly as possible.

Mr. Harris admitted that he has used this expletive in social situations and other political settings but not in a formal setting. For example, at the September 2004 Conservative Party Leadership Convention, he ordered a party worker at a polling station to “just give me the fucking ballot,” and then grabbed the ballot. When another party worker intervened, Mr. Harris said, “You can challenge my fucking ballot, you jackass,” and uttered other swear words. Minister Hodgson also heard the Premier use the expletive at political meetings.

A question that arises is why Attorney General Harnick did not disclose this statement until he testified at the Inquiry ten years later. In May and June 1996, about nine months after Dudley George was shot, the Attorney General was asked in the Ontario Legislature whether the statement “Get the — expletive — Indians out of the park” was made by the Premier, Cabinet Ministers, or other politicians. On repeated occasions, Opposition MPPs asked Attorney General Harnick in the Legislature:



Will the minister report to the House on what he has done to investigate who made this offensive remark, if it was made, and when it was made? Whom have you asked? Whom have you checked with? What have you come up with? Why don't you report back?

The Attorney General replied he had no knowledge of such a remark being made. Some of these excerpts from the Hansard Debates follow:

*I have spoken to those who I understand attended some of the meetings that have been referred to and I have not found anyone who knows anything about that comment or whether it was made or who made it.*

*I can tell you I have no information as to the fact that remark was ever made. I have no knowledge that remark was ever made ...*

*I have made inquiries, as the member has asked me to do. His inquiries were specifically related to finding out who made a particular comment. I have made those inquiries. I have found no one who knows anything about that particular comment. That's all I have to say. (emphasis added)*

Despite the Attorney General's understanding that there is a serious obligation to speak the truth in the Legislature, Mr. Harnick chose not to disclose the Premier's statement to provincial legislators and to the public. Mr. Harnick offered "loyalty and friendship" as explanations for the non-disclosure, and said the Legislature is a "politically charged atmosphere, very different than the atmosphere of a Commission or a Court process." Nor did Mr. Harnick disclose the statement in his examination for discovery in the civil action of Dudley George's Estate against the Ontario government in September 2001.

Mr. Harnick agonized over his decision to disclose the Premier's statement to the Ipperwash Inquiry. It was only when he testified at the Inquiry in 2005 ten years later that he made this disclosure: "I'm under oath and I came here to tell the truth."

Mr. Harnick concealed information and misled the Ontario Legislature when he denied Premier Harris had made this offensive and racist remark. On several occasions in the legislature, Mr. Harnick said he had "no knowledge" and "no information" that the remark was made. Charles Harnick concealed this information for a decade. It was only when he gave his testimony in Forest that he decided to disclose the truth about the deeply offensive and racist statement made by the Premier on September 6, 1995.

After carefully assessing the evidence, my view is that Michael Harris made the statement “I want the fucking Indians out of the park.” Former Attorney General Harnick was certain when he testified at the hearings that he heard Premier Harris make this statement. Mr. Harris acknowledged that he could not think of any reason why Mr. Harnick would concoct or fabricate such a statement. Indeed, providing this evidence to the Inquiry was against Mr. Harnick’s own interest because it contradicted what he said publicly in the Legislature at the time, and I can think of no reason why he would testify to this if it did not occur. Mr. Harris has himself acknowledged that he wanted the “Indians” out of the park — he just denies using the expletive “fucking.” In my view, Mr. Harnick’s evidence regarding Mr. Harris’s statement is credible, and I find that Mr. Harris did make this comment on September 6, 1995.

I agree with Premier Harris’s characterization of the statement, “I want the fucking Indians out of the park,” as racist. As I discuss in Part II of this report, this statement is racist even if Premier Harris did not intend to convey a discriminatory remark about “Indians.” According to the *Ontario Human Rights Code*, as well as judicial decisions, intention is not determinative of whether a statement or conduct is discriminatory. If the statement or conduct has an unjustified adverse impact on a person or group of persons by reason of race or other prohibited ground under the *Code*, the statement or conduct is discriminatory regardless of the intentions of the person responsible for the statement or conduct. Lack of intention does not make racist words or conduct any less so.

Although I find Mr. Harnick’s evidence regarding the substance of the statement to be credible, I question the location and time at which Premier Harris made this statement on September 6. It is possible that this comment was not made inside the dining room meeting. Other people who attended the meeting, such as Deputy Attorney General Taman, Deputy Solicitor General Todres, and Deputy Minister Vrancart, testified that they did not hear this statement at the dining room meeting. More than ten years have elapsed since the former Premier made this statement. It is possible that Mr. Harnick’s recollection regarding where in Queen’s Park Mr. Harris made this comment on September 6, 1995, is not accurate. It is possible that Premier Harris’s statement was made just before entering the dining room meeting. However, irrespective of whether Premier Harris made the comment before or during the dining room meeting, there is no evidence that the Premier’s statement had any influence on the OPP operation at Ipperwash on the night of September 6, 1995, when the CMU and TRU were deployed, or was a cause of Dudley George’s death. This is further discussed in the proceeding chapters.



### *12.4.2 Premier Harris is Cautioned about the Separation of Police and Government*

Early in the dining room meeting, Deputy Solicitor General Todres discussed the role of the Solicitor General, the role of the police, and the important separation of government from the operations of the OPP. Dr. Todres felt it was important to “remind” the Premier and political staff that this policy should be adhered to throughout the meeting.

The ground rules for the discussion were very clear to the politicians. The Premier, Minister Hodgson, and other politicians and political staff testified that they were well aware of this principle. Mr. Harris learned as a student “from school,” and “as a teacher,” the principle of separation between politicians and the operations of the police; this was reinforced when he became an MPP in 1981, and when he was the Minister of Natural Resources in 1985. Minister Hodgson similarly said he had learned the principle of the “distinct separation between the police and government” as early as high school or university.

Deputy Attorney General Taman explained to the Premier the use and types of injunctions — with notice and ex parte. Most of this discussion, which also involved comments from the Attorney General, focused on the “speedier version,” the ex parte injunction: what was the likelihood of success of an application without notice, when would the court decision be served on the occupiers, and the time in which the occupiers would vacate Ipperwash Park. Mr. Taman “thought at the time” and continues to “think now” that “the injunction was not a particularly useful course of action because there was no indication that the Ontario Provincial Police were going to go into the park to take anybody out.”

In Mr. Taman’s view, an injunction created the risk of destabilizing the situation, and applying for it ex parte created the additional drawback that the First Nations people would not receive notice of the application. However, he did not think with or without notice would make much difference. If it were an ex parte application, “a judge would almost inevitably make” the injunction “conditional on giving notice and bringing the parties before the court.” Ex parte “might solve an appearance problem of appearing to do something quickly but wasn’t likely to change the substance of the thing because a judge was likely to want to have the parties before her, before making an order.”

Deputy Solicitor General Todres and others detected frustration in the room from politicians who considered the occupation an urgent matter. This was a “new government,” “keen on presenting itself to the public as being on top of issues.” “They wanted it done with, ... they wanted to move on, ... they had a legislative agenda and they wanted this dealt with as quickly as possible.”

The Premier's anxiety and frustration were also evident to Solicitor General Runciman and Minister Hodgson. Mr. Harris's comments, his "strong personality" and "body language," made it apparent he wanted the occupation to end as soon as possible. The Premier was upset that the situation had progressed to this stage — First Nations people were still in the park — and he "wasn't shy about expressing his concern." What the Premier communicated to the Solicitor General, other Ministers, and senior civil servants was essentially "I want you to get on with it, whatever legal tools are available to us, we should be utilizing them and deal with the situation." This had an impact on people in the dining room.

Premier Harris clearly considered the occupation a higher priority than did the Solicitor General. The Premier was filled with a sense of urgency and wanted to deal with the issue as soon as possible. This contrasted with the views of others at the meeting, including the Deputy Solicitor General. Elaine Todres said:

From a political point of view, this was a new government that was keen on presenting itself to the public as being on top of issues. And as time went on, their notion of immediacy was not in synch with the time that would have been associated with negotiations. And they wanted it done with. They wanted to move on. They had a legislative agenda and they wanted this dealt with as quickly as possible and they didn't want it to linger ...

In her view, a "go-slow," "steady as she goes" approach was appropriate and there was no urgency for First Nations people to leave the park.

#### ***12.4.3 Deputy Solicitor General Hears Offensive Remarks from Minister of Natural Resources***

It was apparent to Dr. Todres that the Minister of Natural Resources, Chris Hodgson, was very agitated that the park occupation had continued into September 6. It was after the initial debriefings in the dining room that Dr. Todres heard Minister Hodgson say: "Get the fucking Indians out of my park." She considered the remark "shocking" and "revealing." Shocking, because she did not expect a Minister of the Crown to use that language — "it was of deep concern" and "offensive." And she thought the phrase "my park" was particularly revealing:

... I found that the remark was both difficult to listen to and revealing, it was revealing in the sense that the park was not his park, and it showed to me a [M]inister who was new at his portfolio and frustrated by the



analysis that was being provided about just how difficult it was with all of the extenuating circumstances, to move forward ...

... What that triggered for me was the reaction of a green Minister, a novice, who was placed in a position of an issue for the first time in his mandate, and indeed a government in the first time of its mandate. And the sudden realization that, first of all, for every issue there is not necessarily a quick response or even a response. Not all problems can be fixed.

And secondly, that when a serious issue is put before a government, when you look at Cabinet structure, it's not surprising that there are a whole variety of contextual things that have to be considered. Lawyers have to speak about legalities and ONAS has its own perspective and it isn't a simple snap decision.

And my sense was that as he'd been listening to the briefings and the complexities of injunctions and what could be done and what couldn't be done, that when he said "my park," it was revelatory of, as I say, an unseasoned person who would have liked to have seen quick reaction and was presented with a very complex set of factors.

There was silence in the room after the Minister's comments, said Dr. Todres. Discussion then resumed.

The Deputy Solicitor General considered Minister Hodgson an inexperienced politician who did not understand the complexities of the situation. It takes time, she thought, to work through the legal issues and other areas of concern to First Nations people. The statement, she said, was "insensitive" and "implied speedy action on a file that was one of the most complicated files we'd seen."

Dr. Todres recalled that she sat opposite Minister Hodgson during the meeting.

Other politicians and civil servants at the dining room testified that they did not hear Minister Hodgson make this comment. This included Attorney General Harnick, who, according to Ms. Todres, was seated across from her. An air conditioner in the room was humming, which may have made it difficult for some to hear the remark. Dr. Todres was "straining at the edge of [her] seat to hear what was actually going on" and does not "know what others heard."

Mr. Hodgson denied saying "Get the fucking Indians out of my park," or words to that effect. He repeatedly insisted he "didn't say a word at the Premier's dining room meeting." The former Minister could offer no explanation for Dr. Todres' assertion that he had made such an insensitive statement.

Mr. Hodgson also denied he was concerned about the Premier's perception of

how he was conducting himself as Minister of Natural Resources on the Ipperwash occupation. Mr. Hodgson had made it clear he did not want to be the government spokesperson on this issue, and he decided not to attend the Cabinet meeting. Mr. Hodgson knew the Premier expected Ministers to be present at Cabinet. Yet Mr. Hodgson emphatically denied the statement attributed to him by Dr. Todres, and further denied he was trying to demonstrate to the Premier that he was “onside” with his approach.

Despite Dr. Todres’ view that Minister Hodgson’s statements were egregious, offensive, and insensitive, she did not interpret them as a direction to the Ontario Provincial Police.

Like Mr. Harnick, Dr. Todres did not discuss Minister Hodgson’s statement with others until she testified at the Inquiry. She considered the dining room meeting to be confidential. She knew the expression “Get the fucking Indians out of the park” had been raised by Opposition members in Question Period in the Legislature within a year of Dudley George’s death. Yet for reasons of confidentiality and because she was not asked “directly by anyone until this Commission” about this statement, she considered her “responsibility” to be “discharged,” and she remained silent.

Solicitor General Runciman did not recall either the Premier or Minister Hodgson making egregious or offensive remarks at the meeting. He could not explain “why people have different versions of what they heard and who they heard it from.” Former Premier Harris claimed he did not remember Minister Hodgson speak at the dining room meeting, and has no recollection of hearing the phrase “the fucking Indians” from any member of his government in the September 4 to 7, 1995, period.

I believe the Minister of Natural Resources made the comment “Get the fucking Indians out of my park,” which was a racist statement. Elaine Todres did not disclose this statement made by Chris Hodgson on September 6, 1995, as she considered the discussions at the dining room meeting confidential. Dr. Todres had no motive to fabricate this statement when she testified at the Inquiry. I agree with Elaine Todres that this statement was shocking and offensive to the First Nations people. Despite the fact that Minister Hodgson made this statement in the dining room meeting, this does not mean he interfered with police operations at Ipperwash Park.

#### ***12.4.4 Seconded Police Officers at the Premier’s Dining Room Meeting — Was the Premier Critical of the OPP?***

Ron Fox was with his assistant, Scott Patrick, when he was paged to attend the dining room meeting. Someone in the Deputy Solicitor General’s office asked



Mr. Fox to go to Queen's Park immediately after the IMC meeting. Mr. Fox and Mr. Patrick, seconded OPP officers, reported to Dr. Todres, the Deputy Solicitor General.

Both the Solicitor General and his Executive Assistant, Kathryn Hunt, also assumed someone from their Ministry had summoned Mr. Fox to the meeting. Yet Dr. Todres insisted she did not request Mr. Fox's presence at the meeting, nor was she involved in any decision to have the seconded officers at the dining room. This surprised Solicitor General Runciman.

Premier Harris also assumed Deputy Todres invited Mr. Fox to the meeting — “it was pretty obvious how they got to the meeting; they were seconded to the Ministry of the Solicitor General so the Deputy Solicitor General, I assume, would have invited them to the meeting.” These two seconded police officers, Mr. Harris stressed, had also attended the IMC meeting that morning on behalf of the Ministry of the Solicitor General and they reported to Dr. Todres.

No one seemed to fully understand that although Mr. Fox and Mr. Patrick were seconded to the Ministry of the Solicitor General, they remained police officers. They continued to be peace officers under the *Police Act*, they remained members of the Ontario Provincial Police Association, and they reported to a senior police officer at the OPP for administrative matters.

When Mr. Fox and Mr. Patrick entered the dining room at Queen's Park, the meeting was in progress. Mr. Taman was educating the Premier on the various types of injunctions. He was explaining that the OPP's approach in the past, which had proven successful in Aboriginal protests, was to initiate and sustain a dialogue with First Nations people at the same time a court injunction was sought.

A subject of controversy is whether Mr. Fox was introduced to participants at the meeting, and whether the Premier and the other politicians were aware he was an OPP officer, seconded to the Solicitor General's office.

There was conflicting evidence as to whether Mr. Fox was introduced, by whom, and by what title. Mr. Patrick recalled that David Lindsay, the Premier's Principal Secretary, in a loud voice introduced him as “Inspector Fox” when he entered the room, followed by a further introduction by Deputy Solicitor Todres. Mr. Fox also remembers being introduced by either the Deputy Solicitor or Solicitor General Runciman, but is uncertain whether his OPP rank was mentioned. Others at the meeting, such as Deputy Minister Vrancart and Ms. Hunt, had no recollection that Mr. Fox was introduced at the meeting.

Mr. Fox, at the request of Deputy Solicitor Todres, was asked to provide an update of what was occurring at Ipperwash.

Premier Harris remembered that a person provided an update of what was happening on the ground from the OPP perspective. Yet he denied this individual was introduced as “Inspector Fox,” or that he knew anyone at the meeting was in

direct contact with the Incident Commander at Ipperwash. But it is noteworthy that had Mr. Harris known OPP officers were in the dining room, he would not have changed or withdrawn any comments he made at the September 6 meeting: “I can’t recall anything that I said at the meeting that I might not have said had there been OPP officers there, save and except I have no reason to understand why they would be there.” In my view, this comment demonstrates a lack of full appreciation of the dangers of either governmental direction of police operations or the appearance of such direction.

Mr. Harris claimed it was only in May 1996, seven months later, that he learned from a newspaper article that a police inspector had been at the dining room meeting. He and Ms. Hutton were “shocked and surprised” that seconded OPP officers attended the IMC and dining room meetings.

I find it difficult to understand Ms. Hutton’s surprise at this information. The Premier’s EA had received the August 2, 1995, IMC minutes. The cover sheet of the minutes, which included Ms. Hutton’s name, also clearly identified Ron Fox as “OPP.” Moreover, she attended the September 5 and 6 IMC meetings with the same seconded police officer; Mr. Fox had provided updates from the Ipperwash site and was obviously in contact with the OPP.

In fact, Mr. Fox had left the September 6 IMC meeting to confirm information with the police in Ipperwash that had been conveyed by MNR officials. Mr. Fox was also an active participant at the IMC meetings who did not subscribe to the “go-fast” approach advocated by Ms. Hutton. I find it difficult to accept that Ms. Hutton, the Premier’s EA, did not know Mr. Fox was a seconded police officer. It was clear to other political staff at the IMC meetings, such as Mr. Moran, EA for the Attorney General, and Mr. Bangs, EA for the Minister of Natural Resources, that Mr. Fox was a police officer.

After the Fox update at the dining room meeting, the Premier conveyed his displeasure that the occupation had not ended. The Premier was disappointed that the OPP had decided to vacate Ipperwash Park after it was occupied on Monday, September 4, and he was frustrated that the occupiers were still in the park two days later on September 6. The Premier said the longer the First Nations people remained in the park, the more difficult it would be to end the occupation. He was upset that the police had relinquished control of Ipperwash Park.

Scott Patrick heard the Premier say police action would be scrutinized at some point in the future. Mr. Fox recalls Mr. Harris saying “it would likely come out in an Inquiry of some form.” Minister Hodgson similarly remembers the Premier saying that if mistakes were made, they would “all come out in an Inquiry.” The Premier was clearly frustrated and spoke in a “loud” and “firm voice.”

Mr. Hodgson “shared” the “same frustrations” as the Premier. The Minister of Natural Resources was also concerned about the situation escalating. He was



worried about the occupation spreading to Pinery Provincial Park and possible blockades on Highway 21.

Mr. Harris agreed he may have said “[S]omebody will review whether the appropriate resources were there, whether more resources should have been there, and whether the occupation could have been prevented”; “that’s all consistent ... with the type of thing I might have said at the meeting.” In the dining room, the Premier had conveyed the “sentiment” that “if there were mistakes that were made that could have prevented the occupation, there would be a time and a place to look at that.” Premier Harris wanted “to understand what actions the OPP had taken to keep the park secure in the first place” — “if the intent of MNR was that the occupiers not come into the park, and if it was the intent of the OPP they not come into the park ... then something went wrong because the occupiers now had the park and the government did not”; “I recall me wanting answers to that.”

In the Premier’s view, the police did not seem to be “as prepared as MNR would have liked them to have been.” Premier Harris “wanted to be able to answer” the question as to “why a park that belonged to the Ministry of Natural Resources was now in the hands of what we deemed to be an illegal occupation.” He wanted to know “how this event took place”; “were the police prepared, should they have been prepared?”

Mr. Fox construed the Premier’s remarks as a criticism of the police. I agree that the Premier’s comments were critical of the police and the fact that they were made in the presence of two seconded OPP officers, one of whom was in contact with the Incident Commander at Ipperwash, created the risk of placing political pressures on the police.

This was a new situation for Premier Harris and his government. He considered it appropriate to ask these questions. Neither in the 1990s nor in 2006 when he gave evidence at the Ipperwash Inquiry did Mr. Harris believe he said “anything at any time that could ever be construed as giving direction to the OPP.”

I note that Solicitor General Runciman, Deputy Attorney General Taman, and Deputy Solicitor General Todres did not construe the Premier’s statements as directions to the provincial police. The Premier was clearly frustrated and disappointed with the OPP’s actions but, in their view, he did not instruct the OPP to take particular actions or interfere with their operational decisions. The Solicitor General said: “[I]f there had been some suggestion of explicit direction to the police to enter the park and remove the occupants, I don’t think there’s any doubt whatsoever that I would have intervened” and “made it clear that that was inappropriate.”

Mr. Taman remembers the Premier commenting that other police forces would have done a better job and had the Aboriginal occupiers out of the park by

this time. The Premier essentially said, “[I]f this were in any other country or any other setting ... the police would have acted more quickly.” The Deputy Attorney General took issue with the Premier’s statement and stressed that, in many situations, the police approach was to exercise patience, try to enter a dialogue, and move at a slow pace with the objective of peacefully ending the protest or occupation. Mr. Taman disagreed with many of the comments made at the dining room meeting, but did not think the Premier crossed the line of giving instructions or interfering with the operations of the OPP. “I heard things I disagreed with but not things I thought were inappropriate”; “I don’t recall the Premier giving any instructions of any kind to the Ontario Provincial Police.”

In my view, although Premier Harris was critical of the police, I do not find that he interfered with or gave inappropriate directions to the police at Ipperwash. The Premier conveyed his displeasure that the police had relinquished control of the park to the First Nations people on September 4, 1995. He also said he did not think the OPP had adequately prepared for the occupation. Moreover, the Premier expressed his displeasure that the occupiers were still in the park two days later on September 6. He was undoubtedly critical of the OPP.

However, the Premier did not inappropriately direct the OPP on its operations at Ipperwash or enter the law enforcement domain of the police. Although one may disagree with his view, it was legitimate for the Premier to take the position that the First Nations people were illegally occupying the park, and that he wanted them out of Ipperwash Park as soon as possible. He did not give directions on the manner in which the OPP should enforce the law; how, when, and what arrests should be made; tactical decisions; or other actions that should be taken by the police to end the occupation. In my view, the Premier did not give instructions to or interfere with the OPP’s operations at Ipperwash in September 1995.

#### ***12.4.5 Seconded Police Officers at the Premier’s Dining Room: Perception of Political Interference in Police Operations?***

The presence of seconded OPP officers in the Premier’s dining room was clearly problematic for the Solicitor General, the Attorney General, and the Deputy Attorney General.

Deputy Attorney General Taman and others subscribed to the view that the appearance of political interference in police operations is of as much concern as the fact of political interference. It was clearly “one of the concerns ... arising out of the dining room meeting.”

It was Larry Taman’s view that it was appropriate for the Premier to make a policy statement that he wanted the occupiers out of Ipperwash Park. The government can legitimately take the position that it has “zero tolerance” for persons



illegally occupying a provincial park, and it is appropriate for the Premier to have these discussions with his Ministers and Deputy Ministers. But the danger of having these conversations with seconded police officers in the room, said Mr. Taman, is that “in the heat of the moment, there’s a risk that it could compromise the operational independence of the police” or create the appearance of political interference with police operations. The exchanges between the Premier, Mr. Fox, and others prompted the Deputy Attorney General to issue a caution against “crossing the line” and instructing the police to take particular actions. Mr. Taman was “uncomfortable” having the discussions with the “OPP officers in the room.” In hindsight, he thought Mr. Fox and Mr. Patrick should not have been present at the dining room meeting.

Both Solicitor General Runciman and his Deputy, Elaine Todres, knew Mr. Fox held the rank of OPP Inspector. They understood that the problem with having the Premier in the same room as the seconded police officers was Mr. Fox and Mr. Patrick’s interpretation of the Premier’s comments. The Solicitor General agreed that Premier Harris should not have been in the dining room with Mr. Fox and Mr. Patrick. There was “no buffer” for the information from the police on the ground to the Premier and the Ministers, or from the Premier and Ministers to the seconded police officers. In other words, it was a problem, both for the information going up to the politicians and for the political opinions coming down to the police.

Mr. Runciman agreed there was transmission of information from outside the Solicitor General’s reporting system. This was a “product of a new government” and a “new Deputy”; “under other circumstances and with a little more experience under the belt ... I don’t think it would have been handled in the way it was handled.” The Conservative Government had been in power for only two months.

Perhaps the Solicitor General should have intervened when Mr. Fox entered the dining room or when the Premier expressed his displeasure that the police had allowed the park occupation to occur. Solicitor General Runciman knew Mr. Fox was a seconded OPP officer, and he understood the protocols, the importance of buffers, and the dangers of the perception of political interference in police operations. He did not think the Premier should have been in the same room as the two seconded police officers. Yet he considered himself an “observer” at the dining room meeting. If Mr. Runciman thought that Mr. Fox’s presence was a result of his new Deputy inviting him to the meeting, then perhaps he should have taken issue with Mr. Fox’s presence at the dining room meeting. The Solicitor General was the Minister with the ultimate responsibility for the OPP, whose role was to ensure relations between the government and the police respected the operational independence of the police.

Dr. Todres agreed that having Mr. Fox and Mr. Patrick at the dining room meeting without the buffers and reporting requirements was a problem both for the information going up from the police and for the opinions that might come down from the politicians. Dr. Todres also acknowledged in hindsight that the proper procedures should have been adhered to. As seconded OPP officer Mr. Patrick said, “we were there, we shouldn’t have been.” The attendance of Mr. Fox and himself at the meeting was not within the normal structure of how communications were to take place.

Although Mr. Harnick does not recall seeing Mr. Fox at the meeting, he does remember the Premier expressing dissatisfaction with the OPP’s performance in permitting the Aboriginal occupation to occur, and that “once in the park, there was no way to get them out.” Had the Attorney General known OPP officers were in the room, he would have been concerned that this was inappropriate language for the Premier to use; “I don’t believe that police officers should have been involved in these discussions.” Although the former Attorney General is confident that comments in the dining room had “no influence, in terms of actions that the OPP may have taken,” he believes that the perception of interference was a concern. Mr. Runciman agreed.

Mr. Taman’s concern at the meeting that “political expressions not cross the line” and constitute instructions to the police in operational matters, as well as his view on the need for transparency, prompted the Deputy Attorney General to introduce changes the following morning.

In my view, Mr. Fox and Mr. Patrick should not have been in the dining room meeting with the Premier and Cabinet Ministers. Discussions on the manner in which the government would address the Ipperwash occupation and the politicians’ views of the protest should not have been shared with the seconded OPP officers. It was outside the proper reporting system and communication channels of the Ministry of the Solicitor General. The appropriate buffers were not in place. Mr. Fox was privy to the Premier’s criticism of the OPP in the dining room. The problem was exacerbated by the fact that Ron Fox was in direct contact with the OPP Incident Commander at Ipperwash during the occupation.

There was a danger in these circumstances, both with the transmission of information from the Premier and Ministry to the provincial police and with the transmission of police information to the politicians. Even though there may not be actual interference by politicians in police operations, the public’s perception of non-interference by the government is a fundamental principle that the Premier, Ministers, and other politicians must adhere to.

There did not appear to be any written rules or protocols on the appropriate role of police officers seconded to the Ministry of the Solicitor General. I recommend



that written protocols clearly delineate the appropriate functions of police officers seconded to provincial Ministries. In addition, politicians and civil servants should be briefed on the appropriate role of seconded officers such as Mr. Fox and Mr. Patrick.

The Premier did not disclose the dining room meeting in Question Period in the Legislature after Dudley George's death. On May 29, 1996, MPP Bud Wildman questioned the Premier:

Can you make it very clear? Did you give any direction or express any opinion about how the situation should be proceeded with to your staff, to the OPP, or to government officials after the occupation of Ipperwash Provincial Park?

Premier Harris replied:

By way of preamble, the member talks about a meeting taking place in advance of a very unfortunate shooting incident at Ipperwash. I don't know if you are implying that there was a meeting that took place to plan this or to talk about this.

Mr. Wildman pursued the question and specifically asked whether the Premier had attended any formal or "informal meetings" on Ipperwash:

The information in the press this morning indicates that the parliamentary assistant to the native affairs minister was present at the meeting, which is quite unusual. Your press secretary is quoted as saying, "The Premier was never directly involved in formal meetings on Ipperwash." There have been all sorts of rumours about statements made regarding getting the "expletive — Indians out of the park."

Why will you not clarify your role in this affair and clear the air? Were you involved in any informal meetings where any informal opinions or directions were expressed about how this matter might be dealt with in order to ensure that the Ipperwash Provincial Park occupation did not continue?

Premier Harris responded:

*Was I involved in informal meetings? I don't know what an informal meeting is. When I go to bed at night, is that an informal meeting? When I sit and talk with people, is this an informal meeting? I clearly*

understand the role of the separation between politicians and the police, and at no time did I give direction to staff to give direction, or did any of my staff give direction, to the best of my knowledge, to any member of the police, the OPP, at any level of any category as to how they should carry out their job. That is not our role and I can assure you that did not take place. (emphasis added)

The Premier did not reveal the occurrence of this meeting that took place the day Dudley George was shot when questioned in the Legislature in 1996 and 1997. It was only in the context of the civil litigation between the family of Sam George and the Ontario government in 2000 that the dining room meeting became public.

The Premier was not responsive to Mr. Wildman's questions in the Legislature. The dining room meeting may not have been a formal Cabinet meeting, but, nonetheless, it was a meeting that he convened for Cabinet Ministers and senior civil servants. Had Michael Harris been forthright from the inception about the dining room meeting, he would have greatly dissipated the suspicions surrounding the meeting and the allegations of improper political interference with police operations. In my view, it would have been better if Mr. Harris had revealed the dining room meeting in response to Mr. Wildman's questions, as it would have promoted the important principle of transparency. I discuss this in further detail in Part II of my report.

#### ***12.4.6 Exchange between Minister Hodgson and the Seconded Police Officers***

The Premier left the dining room, and the meeting came to an end. Small groups of people clustered to talk informally about what had transpired in the dining room. It was at this point that there was an exchange between the Minister of Natural Resources and Ron Fox.

When Mr. Fox suggested the government consider a co-management arrangement with First Nations at Ipperwash Park, Minister Hodgson replied with a comment to the effect that "we have just been told that we can't direct the police, so you don't bother worrying ... yourself ... with politics." In other words, since it had been made very clear at the meeting that politicians could not direct the police, Minister Hodgson was also making it clear that it wasn't the role of Mr. Fox to provide politicians with political advice. This reaction by the Minister of Natural Resources was unfortunate as co-management was a suggestion worthy of consideration. I discuss co-management in greater detail in Part II of this report.



Scott Patrick observed this exchange. He heard Minister Hodgson say MNR officials had been assured by the OPP that the park occupation could be prevented. The Minister was agitated. Mr. Patrick also heard the Minister say “he was the property owner, that it was his park, and that he wanted it back.” He also heard his comment to Ron Fox that the Minister was “not in a position to direct the police, so don’t presume that you can proffer political advice.” These statements are not only indicative of Chris Hodgson’s inexperience as a Minister, but also demonstrate that he knew Ron Fox was a police officer.

Mr. Patrick thought the Minister’s comments were inappropriate. Minister Hodgson was criticizing the actions of the police to seconded OPP officers. Although Mr. Fox was clearly upset by the Minister’s comments, he did not construe them as a direction or instruction to the OPP.

Mr. Hodgson recalled an exchange with Mr. Fox but believes it occurred at the end of the September 6 IMC meeting, not at the dining room meeting. However, other witnesses did not corroborate Minister Hodgson’s attendance during or at the conclusion of the IMC meeting. Nor did Minister Hodgson’s name appear as an attendee in the September 6 IMC minutes prepared by Julie Jai.

Mr. Hodgson agreed he told Mr. Fox it is easier to prevent an occupation than to remove occupiers from occupied property. Mr. Fox’s response, he said, was that “a thousand police officers linked arm to arm around the park wouldn’t have stopped the occupation.” Mr. Hodgson was “surprised” Mr. Fox “gave a policing answer” to his comment.

Yet Mr. Hodgson maintained he did not know Mr. Fox was an OPP officer or that Mr. Fox was in contact with the OPP Incident Commander at Ipperwash. Had he known Mr. Fox was a police officer, Mr. Hodgson claimed he would not have expressed a concern about the police inaction in preventing the Ipperwash Park occupation: “I wouldn’t have talked to the police. I was pretty clear on the distinction between police and elected politicians on operational matters.”

The Minister agreed that he told Mr. Fox not to be concerned with political aspects of the occupation.

Mr. Hodgson knew Mr. Fox was on secondment to the Ministry of the Solicitor General at the September 6 dining room meeting, but claimed he did not know he was an OPP officer. Prior to this meeting, Mr. Hodgson claimed he was under the impression Mr. Fox was a civil servant at ONAS and the Chair of the IMC. Frankly, I do not understand why Mr. Hodgson had this impression, particularly because his EA Mr. Bangs had attended both the September 5 and 6 IMC meetings and clearly knew that Mr. Fox was an OPP officer. Mr. Bangs briefed his Minister after the IMC. Also, his statements to Mr. Fox in the dining room meeting demonstrated that Mr. Hodgson knew Ron Fox was a police officer.

Mr. Hodgson insisted he “didn’t say a word at the Premier’s dining room meeting.” This was contrary to the testimony of Dr. Todres, Mr. Fox, and Mr. Patrick. In fact, after the dining room meeting, Mr. Fox had a telephone conversation with Julie Jai, whose notes of this call follow. The reference to “Cabinet” is the dining room meeting:

... he was called into Cabinet — Larry Taman was also there & was eloquent — he cautioned abt rushing in with ex parte inj — & can’t interfere w police discr. — *but Prem. & Hodgson came out strong ...* (emphasis added)

I find that Mr. Hodgson had this exchange with Mr. Fox in the dining room. The Minister of Natural Resources expressed to the seconded police officer his displeasure that the occupiers were still in the park. I do not accept that the Minister remained silent in the dining room and did not convey his agitation and frustration about the First Nations occupation. However, I do not consider Mr. Hodgson’s comments as interference with the police operations at Ipperwash Provincial Park.

#### ***12.4.7 Was There a Comment about the Holocaust and, if so, in What Context?***

Both Ron Fox and Scott Patrick testified that they heard the Premier make a comment about the Holocaust. Others at the meeting did not recall such a statement.

There were clearly people in the dining room who would be sensitive to a comment about the Holocaust, the decimation of Jewish people by the Nazis in World War II. They would have remembered such a reference. The Deputy Solicitor General is the daughter of a Holocaust survivor, and the Attorney General was on the Canadian Board of Yad Vashem, the Holocaust Memorial Society. Did the noise of the air conditioner in the room prevent others from hearing this comment? Why was this statement only audible to two people in the dining room?

Mr. Patrick tried to explain the context of the Holocaust comment. The Premier said the occupation was a test for the new government. It was after the statement about the government wanting to be seen to act decisively that the Holocaust was mentioned.

Mr. Harris has no recollection of making a reference to the Holocaust at the meeting. The Premier was also on the Board of Yad Vashem at that time, and travelled to Israel with the Holocaust Memorial Society. Whether or not Mr. Harris made a statement regarding the Holocaust, there is no evidence to



suggest that the comment was made in relation to the Ipperwash occupation, or in a disparaging manner regarding Jewish people.

#### *12.4.8 What Was Decided at the Dining Room Meeting?*

People at the dining room meeting had different interpretations of what was decided and the way in which the government would proceed in resolving the Ipperwash Park occupation. These differing interpretations may reflect in part the regrettable fact that no minutes or notes were taken of this meeting.

Deputy Attorney General Taman, whose Ministry was responsible for preparing the court injunction, thought the Premier had communicated the following:

1. The Aboriginal people were in the park illegally, and the Premier wanted them off provincial property as quickly as possible;
2. Public servants were to use their professional judgment and expertise in discharging these instructions.

Mr. Taman knew that lawyers in the Crown law office were in the process of preparing documents for an injunction application. Whether the injunction was with notice to the occupiers or *ex parte* was a technical issue for the government lawyers to resolve, not a matter the Deputy Attorney General thought he should decide. Mr. Taman said no direction was specifically given at the dining room meeting to apply for an *ex parte* injunction.

Mr. Taman did not attach much importance to the type of injunction the provincial government would seek because the resolution, in his view, would essentially be the “same in either case”: “the judge was not going to make an important order that was going to stick for any period of time without hearing from the parties.” In Mr. Taman’s view, it was a “distinction without a difference;” the type of injunction is “really lawyer’s technicalities that I didn’t take any great interest in at the time.”

Mr. Taman considered the Premier’s instructions “fair” and “appropriate.” The Premier had strongly articulated the government’s policy that First Nations people were not legitimately in the park and that he wanted them off provincial property as quickly as possible. But Premier Harris expected civil servants to discharge his instructions responsibly and in accordance with appropriate principles. Separation of the government from the operations of the police was made clear to the Premier in the dining room by the Deputy Attorney General and the Deputy Solicitor General. These senior civil servants did not construe the Premier’s comments as instructions to violate this important principle.

Attorney General Harnick similarly thought no decision was made in the dining room meeting that the government would apply for an ex parte injunction. The Premier's instructions were to seek an injunction as soon as possible, and the Attorney General expected Mr. Taman to instruct the Crown lawyers accordingly. It was not the Attorney General's function to monitor the mechanics of obtaining an injunction, which in his view properly fell within the domain of the legal expertise in the Crown law office.

But there were those at the meeting, such as Solicitor General Runciman, Minister Hodgson, Deputy Minister Vrancart, as well as Mr. Bangs, Mr. Moran, and Mr. Fox, who thought the decision was made to proceed with an ex parte injunction without notice to the occupiers. Mr. Fox in fact called Ms. Jai after the meeting and reported that the direction was to seek an ex parte injunction.

It is evident that the Premier made it clear at this meeting that it was his view that First Nations people were illegally occupying Ipperwash Park, and he wanted them off provincial property as quickly as possible. I believe too much emphasis has been attached to whether the Premier directed an ex parte injunction, rather than an injunction with notice to the occupiers. As I indicated earlier, and as I discuss in detail in Part II of this report, provided there is transparency in government decision making, which includes a written record of decisions made, and provided the government does not step into the law enforcement domain of the police, in my view, it was not inappropriate for the Premier to direct the Ontario government to seek an injunction as soon as possible.

The dining room meeting came to an end. The Solicitor General, his EA, and the Deputy Solicitor General continued to consider the Ipperwash file a "watching brief." When Dr. Todres walked into the dining room meeting, she had assumed the government's approach to the occupation was "slow and steady," but it became quickly apparent that the government subscribed to a "go-fast" approach. The Premier's goal was to have a vacant park as soon as possible. The Ministry of the Attorney General was responsible for seeking the injunction, and the provincial park was within the responsibility of the Ministry of Natural Resources.

Ron Fox was deeply concerned about the government's approach to the Aboriginal occupation as he left the Premier's dining room. He thought the politicians viewed the occupation simplistically. They were either not aware of or chose not to consider the complexities involved in this First Nations occupation.

Mr. Fox was frustrated as he walked out of the Ontario Legislative Building. He decided to share his agitation about what transpired at the Premier's dining room meeting with Inspector John Carson, the Incident Commander at Ipperwash.



## 12.5 Mr. Fox Shares His Views of the Premier's Dining Room Meeting with the OPP Incident Commander

### 12.5.1 *Ron Fox Calls Inspector Carson at the Command Post*

When Mr. Fox called Inspector Carson at 2:00 p.m. on September 6, both he and the Incident Commander had no idea their conversation was being recorded. Although Mr. Fox was embarrassed at the hearings by some of his coarse language, he maintained that the content of the call, such as his description of the IMC and the dining room meetings, was an accurate reflection of what had transpired that day. Had Mr. Fox known the conversation was being tape-recorded, his “language would have been chosen much more carefully,” but “the substance of my message would not have changed.”

This telephone call took place less than one and a half hours after the dining room meeting with the Premier and Cabinet Ministers. The memory of the meeting in the Legislative Building was fresh in his mind. Mr. Fox was clearly upset with the government's position on the Ipperwash occupation and had no reservation about sharing his frustrations with the Incident Commander. Questions that arise are: Should Mr. Fox have communicated the Premier and Cabinet Ministers' views of the First Nations protest, particularly the politicians' perceptions of how the OPP was handling the occupation, to the Incident Commander? Should Mr. Fox, as First Nations liaison in the Ministry of the Solicitor General, have been in direct contact with the Incident Commander?

The main reason for Mr. Fox's call to the OPP Command Post in Forest was to discuss the injunction with Inspector Carson. At that time, Chief Superintendent Coles and Superintendent Parkin were meeting with John Carson in the command post.

Mr. Fox explained to Inspector Carson that Tim McCabe, a lawyer at the Ministry of the Attorney General, was in the process of preparing the government's injunction application. It was an *ex parte* injunction and the First Nations occupiers would not receive notice of the court application. Inspector Carson learned that for the government to be successful, “emergent circumstances” needed to be demonstrated; it was necessary to prove that the “exigencies of the situation” were “increasing exponentially.”

Mr. Fox explained the injunction application was more likely to be successful if the OPP were prepared to give “viva voce” or oral evidence at the hearing, rather than simply filing an affidavit describing the events at Ipperwash from a police perspective. Mr. Fox told the Incident Commander “the political people are really pushing”; “they're pushing to get this done quick,” “[they're] lining up a judge ... tonight” or “tomorrow.”

Inspector Carson was prepared to give evidence in court on the injunction application as long as OPP Chief Superintendent Coles and Commissioner O’Grady “don’t have a problem with that.” He thought an ex parte injunction was necessary, given the events of the past two days: “a confrontation when the occupiers came into the provincial park,” “an altercation through the night with the cruiser windows being smashed,” “picnic tables on the sandy parking lot,” “gunfire that was heard back in the military base through the night,” “cars being driving in [an] erratic manner inside the park” — “when you put all those factors together, there’s such a progression of events that, hopefully, you would have enough ... for an emergent order.”

Inspector Carson thought there were grounds for an ex parte injunction and did not want to wait the estimated two weeks for an ordinary injunction with notice to the First Nations occupiers. The Incident Commander sought a determination from the court as to whether the “property was in rightful ownership of the Ministry of Natural Resources” and “some direction” with regard “to the occupiers who were on that property. I just wanted the legal support to plan whatever next steps might be necessary.” Inspector Carson and the OPP were “not prepared to act” until a court injunction was obtained. Although Inspector Carson was committed to resolving the occupation peacefully, he thought two weeks was too long.

Mr. Fox shared with Inspector Carson his perceptions of the government from the IMC and dining room meetings he attended earlier that day: “John, we’re dealing with a real redneck government ... [T]hey are fucking barrel suckers, they just are in love with guns.... [T]here’s no question they couldn’t give a shit less about Indians.”

By “redneck government,” Mr. Fox was trying to explain that politicians were taking the position that there was “one justice for all,” with no differential treatment of First Nations people. The comments “barrel suckers” and “in love with guns” were references to the IMC meetings where some political staff seemed to be preoccupied with the possibility of firearms in the park and army camp, and believed that a way for the government to solve the problems at Ipperwash was through the exercise of force. Mr. Fox was frustrated with what he perceived to be a lack of concern and insensitivity by the provincial government to First Nations issues.

Although Inspector Carson responded to Mr. Fox’s comments, “They just want us to go kick ass,” the Incident Commander made it very clear that the OPP were “not prepared to do that yet.” Inspector Carson stressed to Inspector Fox that “despite the various opinions that may be at play here,” the OPP have “no intention of going into that park.” Until they “had received the appropriate



injunction, that simply wasn't going to happen" — "the injunction approach ... is the way we deal with these kinds of issues."

Inspector Carson understood from this conversation that the government was taking an aggressive approach to the occupation. He did not construe Mr. Fox's strong language about what transpired in the dining room as statements that the Premier and his Ministers were a racist government.

Mr. Fox relayed the comments of the Premier and Ministers at the dining room meeting, to which he had been summoned. The Premier "is a redneck from way back" who "came right out and said, 'The OPP, in my opinion, made mistakes — they should have done something right at the time ... that will, I'm sure, all come out in an Inquiry some time after the fact.'"

The Premier, Mr. Fox continued, believes the OPP did not take adequate measures to prevent the Aboriginal occupation; the Premier "believes that he has the authority to direct the OPP." Inspector Carson responded, "I hope he and the Commissioner have that discussion."

John Carson was very aware of the separation between police operations and the provincial government. He knew that under the *Police Services Act*, "the Commissioner is responsible for the operations of the Ontario Provincial Police," and that as an OPP Inspector, he took his "direction through the chain of command from the Commissioner's office." Inspector Carson "certainly wasn't pleased" the Premier had expressed this opinion but did not seem too bothered by his comments. John Carson said the following at the Inquiry:

*... it's simply that; it's his opinion. I'm a police officer. I'm not a politician. I have to work within the boundaries of the legal framework, and I have to work for people that I report to. As long as my commanders that I report to are satisfied with the direction I'm taking, the political opinion is simply that. I would have much preferred that he thought we were doing a great job, quite frankly, but that may have not been the case. (emphasis added)*

The Premier, Mr. Fox continued, "makes a couple wild ass comments, gets up and leaves the room." One of the comments to which he was referring was the alleged statement about the Holocaust.

Mr. Fox then described to Inspector Carson his unpleasant encounter with the Minister of Natural Resources in the Premier's dining room. In response to questions, Mr. Fox had told Minister Hodgson that shots heard overnight could have been from a semi-automatic gun, but emphasized that no weapon had been pointed at anyone. He had stressed to the Minister that the park was closed for the

season, and this was a complicated property dispute. Minister Hodgson did not want any advice. “You know what the prick says to me?” Mr. Fox recounted, “Well, I’ve just been told that I can have no influence over the police doing their job so I’m suggesting you let me worry about the political ramifications.”

Mr. Fox continued: “I said [to Minister Hodgson] perhaps we can survive the political backlash. I said it may be that John Carson and his people will be able to work magic and these people will simply walk away and abandon their position.” To which John Carson replied: “That ain’t gonna happen.” Mr. Fox continued:

And I said, “[M]y guess is we’re going to get a bloody nose, or somebody is,” and I said, “[A]t the end of the day, if you’re prepared, that’s up to you. I’m not making a political statement. I’m giving you a bite of reality.” ...

He looked at me, and I thought you prick, fuck ... John, I couldn’t believe it. Like I mean ... you don’t back away. Let’s just do the bloody job right.

John Carson agreed.

The reference by Mr. Fox to a “bloody nose” was to the application of force. Inspector Carson understood Mr. Fox had warned the Minister of Natural Resources it was dangerous to take precipitous action against the occupiers. It was evident that Minister Hodgson, like the Premier, was upset that the police had not taken measures to stop the park occupation by the First Nations people.

Chief Superintendent Coles was in the command post listening to Inspector Carson’s responses in his call with Ron Fox. He was concerned with some of the exchanges and decided to caution Mr. Fox about the information flow to the government. What prompted Chief Coles to become involved in the call was that what he heard “led [him] to believe ... operational matters ... were being discussed ... at the Ministry level,” and he was concerned “why they would have been talking about automatic weapons.” The call between Inspector Carson and Mr. Fox ended.

Chief Superintendent Coles immediately spoke to Ron Fox and cautioned him:

I’ve got a concern that we want to be careful what we’re doing here, that we don’t give them, the people you’re talking to ... information too fast ... The problem with that, Ron, is if you’re not careful, you’re gonna run the issue there as opposed to ... myself and the Commissioner running it here ...



Chief Superintendent Coles warned that, because Mr. Fox was communicating with Inspector Carson, which he had no objection to, Mr. Fox was the “fastest source of information” for politicians at Queen’s Park. The Chief warned: “[W]e’re going to end up running it politically, and I don’t want that.... It’s dangerous if you think about it ... sometimes too much information is a dangerous thing.”

Mr. Fox made it clear to Chief Superintendent Coles that he “wasn’t the source of the errant information flow” to the government. Most of this information was making its way to the IMC from MNR officials; Peter Sturdy is “getting fed” information such as the automatic weapon fire by MNR staff at Ipperwash. “That’s the trouble,” said Chris Coles, “they’re going to react to that kind of stuff ... [T]here’s conversation going there that’s operational” and “it’s gonna get dangerous cause now that’s dangerous to have that happen.”

Chief Superintendent Coles was quite properly concerned that operational information had been discussed at the IMC meeting. He was also concerned about the report of automatic gunfire to the IMC. He wanted the situation “to be run from that incident room” in Forest, not from Toronto. Whether the gunfire was automatic or semi-automatic was a decision for the Incident Commander and the OPP, not for politicians, political staff, civil servants, or “some government think-tank.” Chief Coles also had concerns about the safety of his officers. He instructed Mr. Fox to “downplay all the heavy weaponry”; it is important to be “very careful with raw information, raw data,” information that has not been authenticated.

Chris Coles knew from previous experiences that the Ministry of Natural Resources operated differently from the police. As he said to Mr. Fox, “I feel no obligation, when I’m given information to go up the chain. If it’s my responsibility, I accept the responsibility and I’ll handle the situation; that’s the way policing occurs.” But “in the Ministry of Natural Resources, things seemed to go to the higher echelons a lot faster.” It became clear to the OPP Chief Superintendent during the telephone call that MNR Park Superintendent Les Kobayashi was the source of police operational information to provincial government officials. Mr. Kobayashi had attended the briefings of the OPP officers.

Chief Superintendent Coles appreciated that Mr. Fox was in a “delicate” position as the liaison between the police and the provincial government. But he was worried that people who did not have a police perspective might blow the information out of proportion and this might cause unnecessary anxiety. He also did not want the Incident Commander distracted by these issues and was adamant that the Ipperwash occupation be directed solely by the police at the Forest Command Post.

Ron Fox understood his superior's concerns; "in terms of operational information being provided to either bureaucratic or [a] political arm of the government," Chief Coles felt that was "dangerous" and Fox "agree[d]." Information related to the tactical decisions of the police clearly should not be conveyed to the IMC or to the politicians; "information with respect to what we're going to do — and I'm saying that as a police officer — and when we're going to do it, has to fall to us." The liaison officer also thought too much time and energy was spent "run[ning] down rumours" — information that was not accurate or well sourced.

Inspector Fox decided to convey to Chief Superintendent Coles his perception of the Premier's comments at the dining room meeting:

*The Premier is quite adamant that this is not an issue of Native rights and then his words ... "we've tried to pacify and pander to these people for too long. It's now time for swift affirmative action." I walked in the tail end, Chris, with him saying things like, "well, I think the OPP have made mistakes in this one. They should have just gone in." He views it as a simple Trespass to Property, that's in his thinking. He's not getting the right advice or if he is getting right advice, he's certainly not listening to it in any way, shape or form. (emphasis added)*

Although former Premier Michael Harris testified he did not use the words "we've tried to pacify and pander to these people for too long," he did believe that his government should not treat the illegal occupation any differently from other illegal occupations in the province. When Ron Fox told Chief Coles "the Premier is quite adamant that this is not an issue of Native rights," Mr. Harris agreed this was accurate and reflected "my viewpoint." Regarding the comment "it's time for swift affirmative action," Premier Harris on September 6 believed the government "should be moving quickly to end the occupation."

Chris Coles suddenly ended the telephone conversation and told Ron Fox, "I gotta call you back from another line."

The Chief Superintendent left the command post where he and Inspector Carson had been speaking to Mr. Fox and he walked to the police detachment. Neither Chief Superintendent Coles nor Ron Fox could recall at the hearings whether the second conversation took place. Nor could Chief Coles remember why he decided to end the call at the command post. He surmised that it may have been because he did not want to interrupt the work of the OPP officers in the command post, he was concerned others would overhear the telephone conversation, or perhaps he simply needed to go to the washroom. The telephone call took place in a small trailer about forty feet in length, approximately six feet of



which was dedicated to telecommunications and other equipment; it was “fairly close quarters.”

It is most unfortunate that neither the OPP Chief Superintendent nor Ron Fox could remember why the call abruptly ended at the command post or whether a second conversation took place. As a result, much speculation and skepticism has surrounded the exchange between Chief Superintendent Coles and Ron Fox. In order to promote the objectives of transparency and accountability, which I discuss at length in Part II of my report, there ought to be a written record or a recording of the conversations that took place.

Chief Superintendent Coles had made it abundantly clear to Mr. Fox that information to the politicians and bureaucrats was to be limited.

As Inspector Carson listened to Chief Superintendent Coles’ comment to Ron Fox during the telephone call in the command post, he knew his superior was anxious about the flow of information, particularly from MNR staff to the government. The discussion at the IMC meeting about automatic gunfire was clearly a serious concern for the Chief. It was John Carson’s understanding that Chris Coles no longer wanted Mr. Fox to call the Incident Commander to confirm the veracity of information received by government officials; it was “very disruptive” and also he “didn’t want this competition for information at the Ministry level.” He thought future calls from Mr. Fox would be directed to Chief Superintendent Coles rather than to himself; “it was clear from that point that I wouldn’t be getting calls from Ron Fox.”

In fact, Chief Superintendent Coles did not intend to halt communication between Inspector Carson and the seconded OPP officer. What he was trying to emphasize to Mr. Fox was that the liaison officer should exercise a high degree of discretion in deciding what information to disclose to political staff as well to bureaucrats at the IMC. His concerns were that the information was going up too fast and that it was operational.

Chief Superintendent Coles also did not want the OPP to be in a position of responding to pressure to take quick action as opposed to following the conventional OPP approach in such situations of moving slowly, methodically, and logically.

In my view, Mr. Fox, seconded to the Ministry of the Solicitor General, should not have communicated directly with Inspector Carson or other officers at the Ipperwash command post. As an OPP officer seconded to the Ministry of the Solicitor General, Mr. Fox was outside the OPP chain of command and should not have had contact with police involved in the operation. Information and decisions should have been conveyed to the Deputy Solicitor General who, in turn, would decide which information was appropriate to transmit to the OPP Commissioner.

Contrary to the views of Chief Superintendent Coles and Superintendent Parkin, I do not think it is appropriate for OPP officers seconded to the government to have direct contact with Incident Commanders during a police operation. This is fundamental, not only to avoid political interference in police operational decisions, but also to prevent the perception of political interference. The need to follow proper ministerial lines of authority and the OPP's regular chain of command is also important to ensure accountability.

OPP Commissioner Gwen Boniface, who testified in the last weeks of the hearings, agreed it “would have been much better for [Ron Fox] not to have made the call direct to the command post.” She thought information from Mr. Fox should have been communicated to Commissioner O’Grady’s office. There should have been an interface — the OPP Commissioner’s office — between Ron Fox and the police at Ipperwash.

### *12.5.2 The Effect of the Call on the Incident Commander*

It was apparent to Inspector Carson that Ron Fox was frustrated with the exchanges he had had with politicians and political staff in the Ontario government. He had learned from the telephone call that the Premier was not pleased that the OPP had lost containment of the park on September 4.

Inspector Carson did not think it was Mr. Fox’s “job” as Special Advisor, First Nations to the Deputy Solicitor General to convey the thoughts of the Premier, the Minister of Natural Resources, and other politicians to the Incident Commander: “he certainly shared his thoughts with me, but that certainly wasn’t his job to do that.”

Yet Inspector Carson maintained that Mr. Fox’s comments had “no [e]ffect on [his] actions other than working towards the injunction” and “attempting to get Mark Wright prepared to attend the application process for the next morning.” His plans for the OPP in the Ipperwash occupation did not change: “Nothing I had in place was changed whatsoever” — “the use of the CMU [Crowd Management Unit] had absolutely nothing to do with this telephone call or any other telephone call with Ron Fox.”

John Carson repeatedly said that the views of the Premier and his Cabinet Ministers had no effect on him. Rather, it was the assessment of his OPP superiors, Chief Superintendent Coles, Superintendent Parkin, and the OPP Commissioner, that Inspector Carson considered important:

If the Premier or anybody else of that level has any concerns, then their concern[s] needed to be taken up with the Commissioner of the Ontario Provincial Police. As an Inspector, I clearly have a chain of



command that I have to satisfy and it may not always be in keeping with other people's opinion, including political folks.

It was also evident to Ron Fox, after he shared the Premier's views with Inspector Carson, that the Incident Commander would not deviate from or change the OPP's approach to the First Nations occupation. Inspector Carson clearly knew the Premier had no authority to direct the OPP in operational matters. Ron Fox thought Inspector Carson had no intentions of succumbing to political pressure:

What I took was that Inspector Carson had a course of action set out and he wasn't going to move from it. If there was to be a deviation from his course of action, that direction would have to come from his ultimate superior, that being the Commissioner of the day.

At the time of this incident, Ron Fox had known John Carson for over twelve years and he respected his judgment and skills as an OPP Inspector and as an Incident Commander. Mr. Fox was also aware that John Carson was sensitive to First Nations issues. Chief Superintendent Coles and Commissioner O'Grady shared these views. Inspector Carson's superiors did not think the Incident Commander was pressured from the calls to change his approach to the occupation.

As I conclude in the next section of the report, Inspector Carson's decision to mobilize and deploy the CMU and TRU on the night of September 6 was not a result of political direction or interference by the Ontario government. From the conversations Inspector Carson had with various police officers, Mr. Fox, his superiors, and others, it is evident John Carson understood the separation of government from police tactical decisions, and he attached little importance to the comments conveyed by Mr. Fox to him on the government's view of the Ipperwash Park occupation. He also remained committed to the objective in Project Maple of negotiating a peaceful resolution. Inspector Carson demonstrated considerable integrity in resisting the political pressures conveyed to him by Mr. Fox. A less experienced officer may have been influenced by news of the Premier's displeasure and expectations that the occupiers be removed quickly.

The Incident Commander also had no intentions of allowing his officers to enter the provincial park. Inspector Carson was waiting for the injunction application to be made to the courts before the OPP made any decisions regarding the occupiers at Ipperwash Park. As will be evident in the following pages, even on the night of September 6 when Inspector Carson deployed the CMU and TRU, his instructions were clear that the police officers were not to enter the park.

The Premier's opinions and comments should not have been communicated by Ron Fox to John Carson.

### *12.5.3 Ron Fox is Chastised by His Superiors for Inappropriate Language and Criticism of the Government*

In July 2003, almost eight years later, Deputy Commissioner Pilon and Superintendent Parkin met with Ron Fox to discuss the language used in his telephone conversations with Inspector Carson on September 5 and 6. The tapes of Mr. Fox's conversations with Inspector Carson were played. Mr. Fox was chastised by his superiors for using language inappropriate for a commissioned officer of the OPP, as well as for his criticism of government officials. Ron Fox agreed with this assessment and apologized. His behaviour, however, was not considered "misconduct" by the OPP.

Deputy Commissioner Pilon wrote:

I counselled Superintendent Fox, indicating we'd naturally looked at these from a discipline point of view and while they fell short of misconduct, the language and criticism of government officials was not consistent with our expectations for officers, and particularly senior officers.

When Superintendent Parkin listened to the taped conversations, it confirmed for him that OPP Incident Commander Carson had not taken direction from the government in connection with Ipperwash. This was the most important consideration, he believed, in determining political interference, as the Incident Commander is the person in the field who makes the decisions as to the conduct of the OPP. In his view, Inspector Carson made it clear in these calls with Mr. Fox that he would continue to follow the OPP approach and would not succumb to the opinions of others, including the views of politicians at Queen's Park.

Like Chief Superintendent Coles, Superintendent Parkin had no problem with communication between Ron Fox and Inspector Carson during the Ipperwash Park occupation. They took the position that discussing the injunction application for the following day was clearly appropriate. It was important there be some exchange between the liaison officer and the OPP at Ipperwash. But it was critical that the seconded police officer not convey to political officials any operational information and, conversely, that the views of the politicians on police operations in the Ipperwash occupation not be transmitted to the Incident Commander or other police officers involved in the Aboriginal occupation.



Dr. Todres, the Deputy Solicitor General, expected proper protocols to be followed in conversations between Mr. Fox and Inspector Carson. In her view, it was inconsistent with the protocol for Mr. Fox to convey to the Incident Commander that the Premier was critical of the way in which the OPP was handling the Ipperwash occupation. The Deputy Solicitor General thought Mr. Fox had had a “lapse in judgment” in conveying the discussions in the Premier’s dining room to Inspector Carson; “the lapse of judgment” was not solely the intemperate language, it “was the phone call itself.” The fact is that no written protocols existed in the Ministry of the Solicitor General regarding the appropriate role of Mr. Fox. Had such written protocols existed and had Mr. Fox been briefed on these protocols, such exchanges between the seconded police officer and the Incident Commander likely would not have occurred.

Deputy Attorney General Larry Taman believed that Ron Fox’s role as liaison officer was to communicate with the OPP in Forest. As previously mentioned, Mr. Taman did not “have [a] problem with the Premier wanting to pursue a policy,” nor did he “have a problem with what the Premier said” in the dining room meeting. Whether the Deputy Attorney General or others agreed with the policy is “immaterial” — “he’s the Premier; he’s entitled to set policy.”

What concerned Deputy Attorney General Taman was “the alarming way that policy statement seems to have found its way directly to the front line, oddly enough by the person who described himself as the buffer.” He stressed that the “political side of government needs to be able to discuss its policies, its problems, its reservations, without having the discussion find its way to the Incident Commander.”

There was, Mr. Taman said, “a clear leaking over of political conversation into the operational domain and I don’t think this is good practice” — “it wasn’t appropriate to pass on to officers on the ground what the Premier had to say ... I doubt very much that it was his intention that that should happen in that way, but in any case it happened and, in my view, [it] shouldn’t have happened.”

In my opinion, what was not adequately stressed in the discussion between Mr. Fox, Deputy Commissioner Pilon, and Superintendent Parkin was the inappropriateness of conveying the politicians’ views of the OPP to the Incident Commander. The OPP Deputy Commissioner and the Superintendent should have emphasized to Mr. Fox that in conformity with the important principle of separation of government from the operations of the police, the comments as well as criticisms of the police at Ipperwash by Premier Harris or Cabinet Ministers should not have been communicated to the OPP Incident Commander. Mr. Fox should

not have been in direct communication with Inspector Carson, the Incident Commander of the Ipperwash occupation.

Superintendent Parkin was not aware of any written rules or protocols that govern information that seconded police officers, such as Mr. Fox, could appropriately convey to the government and, conversely, information that the liaison officer could communicate from dealings with government to the OPP. As I mentioned earlier, written protocols should be prepared on the appropriate role and channels of communication of OPP officers seconded to the government. I discuss this issue in Part II.

## **12.6 Christie–Taman Exchange — Instructions to Proceed Immediately**

Elizabeth Christie recalls having an “unusual” discussion with Mr. Taman in a hallway on the 11th floor of 720 Bay Street. Ms. Christie, whose office was on the 8th floor, was on her way to the 11th floor to the Deputy Attorney General’s office specifically to talk to Mr. Taman. She was working on the injunction and wanted to know if there was anything new happening.

During this discussion, Deputy Attorney General Taman instructed Ms. Christie to proceed with an injunction as quickly as possible. He thought there might be a rule of procedure by which it was possible to apply for an injunction that afternoon in Toronto. Although Mr. Taman did not specifically mention an *ex parte* injunction, Ms. Christie concluded that if the injunction would be heard that afternoon, it would be *ex parte* as there was insufficient time to draft and serve notice on the First Nations people in Ipperwash Park.

Ms. Christie noticed Mr. Taman was “quite anxious” and somewhat agitated during their hallway discussion. She thought this was because the Deputy Attorney General believed that proceeding quickly on an *ex parte* basis was not the best course of action. But “we were counsel to the Crown and we had to follow our instructions.”

Although Mr. Taman had no specific recollection of this conversation, the former Deputy Attorney General did not dispute Ms. Christie’s evidence that he spoke with her around the lunch hour on September 6. He testified that the information he conveyed to Ms. Christie was consistent with the instructions he had received earlier that day from Attorney General Harnick.

Tim McCabe was soon made aware that government lawyers needed to proceed immediately with an injunction. In the early afternoon of September 6,



Elizabeth Christie conveyed the instruction she had received from Mr. Taman to the senior MAG litigation lawyer — to seek an injunction as soon as possible and to try to schedule an injunction hearing that afternoon in Toronto.

When Mr. McCabe left the IMC meeting on September 6, his intentions were not to prepare an *ex parte* injunction. However, once he heard the new instruction from Ms. Christie that involved this accelerated court appearance, he knew it was necessary to prepare an *ex parte* application to seek an immediate injunction.

Although Mr. McCabe did not think this was the best way to proceed in the Ipperwash occupation, the government lawyer did not think there was anything wrong or reprehensible about proceeding under the *ex parte* rule.

In accordance with her instructions from Mr. Taman, Ms. Christie contacted the trial coordinator in Toronto who said it was not possible for the injunction application to be heard that day. She was advised to contact the trial coordinator in Sarnia or Windsor. Ms. Christie was told Mr. Justice Daudlin could hear the motion in Sarnia the next day and she was asked to provide the Registrar with faxed materials as soon as they were prepared. The Registrar would retrieve the documents from the court office and deliver them to the judge at home that evening.

MAG lawyers were under extreme pressure to prepare the *ex parte* injunction application — the notice of motion and the affidavits. They also had to arrange for the *viva voce* or oral evidence from a witness who would testify on the court application. Mr. McCabe and Ms. Christie worked intensively that afternoon and late into the night preparing the materials.

In my view, Premier Harris's comments in the dining room, and generally the speed at which he wished to end the occupation of Ipperwash Park, created an atmosphere that unduly narrowed the scope of the government's response to the Aboriginal occupation. The Premier's determination to seek a quick resolution closed off many options endorsed by civil servants in the Ontario government, including process negotiations, the appointment of mediators, and the opening up of communication with the First Nations people. His narrow approach to the occupation did not enable the situation to stabilize at the park. Premier Harris had made it clear he wanted the occupiers out of the park as quickly as possible.

## SEPTEMBER 6, 1995 — MISCOMMUNICATION AND POOR INTELLIGENCE

### 13.1 Encounter between Mark Wright and First Nations People

Acting Detective Staff Sergeant (A/D/S/Sgt.) Mark Wright left the MNR parking lot at about 7:30 p.m. after persuading local residents not to march to the park to demonstrate their anger and frustration with the First Nations occupiers. He drove on East Parkway Drive toward Army Camp Road.

As Mark Wright approached the curve where the two roads meet, he saw eight to ten Aboriginal males outside the park fence line. They stood in the sandy parking lot. About four of them held clubs, sticks, bats, or axe handles. Mark Wright was dressed in civilian clothes and drove an unmarked car.

One of the First Nations men approached the roadway and stood about three to five metres from A/D/S/Sgt. Wright's car. He held what appeared to Mark Wright to be a bat in his hand. When Wright asked the man what the group was doing, the Aboriginal man "told [him] to leave, it wasn't [his] problem." A/D/S/Sgt. Wright asked if he could enter the sandy parking lot. The Aboriginal man and other members of the group were "tapping" their club, bat, or axe handle "into their open palm." It appeared to the OPP officer that the First Nations man was "taking control of the roadway and certainly the sandy parking lot."

Mark Wright noticed another First Nations male, who looked familiar, approach his car. He "felt it prudent to leave" the area, concerned that this man would recognize him. Wright clearly considered the encounter "confrontational." These Aboriginal men were on public property, they had denied him access to the sandy parking lot, and some were "armed."

Clayton George and Glen Bressette were among the group of Aboriginal men standing near the intersection of East Parkway Drive and Army Camp Road. Clayton George had a stick in his hand. Mr. Bressette thinks Stewart George instructed who he believed was an "undercover cop" to leave the area. He thought Mark Wright was a disguised officer because "he looked really spiffy." The Aboriginal men also saw Mark Wright stop at the checkpoint and speak to the uniformed officers.

A/D/S/Sgt. Wright drove south on Army Camp Road and stopped at Checkpoint "C" (Charlie) near the trailer park. He described to Constables Poole and



Zacher the details of his encounter with the First Nations people. Mark Wright believed “things were escalating” and he told the OPP officers “to be careful.”

Mark Wright then drove to Checkpoint “D” (Delta) on Army Camp Road and Highway 21 and conveyed the same information to officers stationed at this checkpoint. While he was at Checkpoint “D,” there was a radio transmission from Checkpoint “C” that a civilian’s car had been damaged by a rock thrown by “Natives on the road.” A/D/S/Sgt. Wright instructed Constable Poole to take a statement from that person.

A/D/S/Sgt. Wright decided to contact the command post to relay information on his encounter with the Aboriginal people at the sandy parking lot. It was before 8:00 p.m. He spoke with Sergeant Cousineau, the radio operator at the mobile command post, and asked for the Inspector. He was told Dale Linton was on duty; in fact, Inspector Linton at that time was trying to contact A/D/S/Sgt. Wright.

As Mark Wright approached the Ravenswood area<sup>1</sup> in his car, he relayed the following to the command post:

*Yeah, we got about a — up to eight individuals at the picnic table area. I assume you know what that is. And they’re just about on the edge of the road. They’ve got some bats and stuff in their hand and apparently they damaged some — an individual’s vehicle. So we got some mischief right now. And wilful damage. And I talked to them for a while. They weren’t sure who I was, and it appears to me that they’re up to something. So can you talk to your ERT guy in there with the Inspector? I’m on my way back. I’ll give you a full rep when I get back, but I think we should be moving some people down that way. I think we should be moving some people down that way. Almost ten away. Ten minutes away from the command post. (emphasis added)*

A/D/S/Sgt. Wright testified that his statement “I think we should be moving some people down that way” signified his desire to add more officers to the checkpoints closest to the area of his encounter with First Nations people; namely, Checkpoint “A” on East Parkway Drive, and Checkpoint “C” near the trailer camp on Army Camp Road.

Mark Wright was aware people in the area had scanners and listened to police communications. However, it did not occur to him that First Nations people might be listening to his transmission about sending additional officers to the park area, which could raise anxiety amongst the occupiers.

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1 Ravenswood is west of the intersection of Highway 21 and Army Camp Road.

As he continued his journey to the command post, Mark Wright realized the Emergency Response Team (ERT) night shift was replacing the day shift. He contacted Sergeant Korosec and told him to “hold back” the day shift: “I didn’t want him letting them go” as “I was very concerned about what was going on.” At the hearings, Mark Wright explained the reason for his decision. When the OPP removed the picnic tables from the sandy parking lot early that morning, Inspector Carson had held back the ERT night shift. It was Mark Wright’s perception that the situation was escalating with the First Nations occupiers, and he thought the Incident Commander might want additional officers that evening:

*I was cognizant that we had a potential problem down there. I was very concerned about what was going on and I was harkening back to exactly what, in my mind, had taken place around [7:00 a.m.] that very same day when we had the people with the picnic tables out on the road. And Inspector Carson held back the night shift ERT team so that we would have those individuals available in order to deal with that immediately. And that was what I thought was the best thing to do ... hold them back so that they would be handy for the Incident Commander to do with whatever he felt necessary in order to deal with that situation down at the sandy parking lot as quickly as possible. (emphasis added)*

A/D/S/Sgt. Wright met with Inspector Linton when he arrived at the command post. Sergeant Graham and Sergeant Korosec were present. He described the Aboriginal people on the roadway, a number of whom had bats and axe handles, and he explained how he had been denied access to the parking lot. The officers also discussed the damage to a car caused by the First Nations people.

Inspector Linton thought it was time to take the “B team with helmets and K-9” to the site of these encounters. The typed OPP scribe notes at 8:02 p.m. say:

Dale Linton, Mark Wright, Rob Graham and Stan Korosec. Mark Wright reports Natives off park area with baseball bats. Const. Zacher [reports] a personal vehicle being damaged.

*Dale Linton, Let’s take over ‘B’ Team with helmets and K-9.*

*Trevor Richardson arrived in meeting reporting Brian Byatt reports lots of activity in kiosk area. They took the gas to fill the bus ...*

Mark Wright briefing Insp. Carson on telephone.

Dale Linton, Let’s wait and see what Prov. Const. Poole’s statement reveals.



Rob Graham reports the Natives have the dump trunk [*sic*] and bus en route to the kiosk area. (emphasis added)

A/D/S/Sgt. Wright knew Inspector Linton wanted the canine unit and officers from Checkpoint “B” (Bravo, on East Parkway Drive) to “deal” with the First Nations people who were outside the park fence. But Mark Wright did not agree. Inscribed in the handwritten scribe notes is: “MW disagrees — advise males to back off into park.”

A/D/S/Sgt. Wright thought the First Nations people in the parking lot or on the roadway ought to be told by OPP officers that they must return behind the fence into the park. But again the use of a bullhorn or similar device to communicate this message to the occupiers did not occur to him.

In what Mark Wright perceived to be Inspector Linton’s indecisiveness, the Incident Commander then said he did not want to take any police action until he received the statement from Constable Poole regarding the damaged car because, in Dale Linton’s view, with the exception of the car, the First Nations people “weren’t doing anything wrong.” A/D/S/Sgt. Wright’s frustration with Inspector Linton is evident in a telephone conversation he has with Inspector Carson minutes later.

During this discussion, Sergeant Rob Graham noticed A/D/S/Sgt. Wright was very concerned that First Nations people had damaged a vehicle. Inspector Linton wanted to wait for the statement taken by Constable Poole. It was evident to Sergeant Graham that Inspector Linton and A/D/S/Sgt. Wright wanted to “proceed at different paces”; “Detective Sergeant Wright was looking for some more quicker, immediate decisions or faster decisions.” As Rob Graham said at the hearings: “There were certainly two different tacks being taken from my point of view.”

Detective Constable Chris Martin, who was monitoring the video cameras, told Sergeant Korosec and Detective Sergeant Richardson that a “Native” male was in the park gatehouse kiosk with the blinds down and the door closed. Periodically the Aboriginal man peered out the window, but Chris Martin did not know if he was armed. There were two monitors at the Grand Bend Detachment: one for the gatehouse kiosk and one for the maintenance shed. There were separate logs for each monitor. Detective Constable Martin’s job was to watch both these monitors and to fill in the logs. Detective Sergeant Richardson considered the activity at the kiosk suspicious.

Sergeant Korosec sent a radio transmission to the two dayshift ERT teams (Teams 3 and 6) to return to the Forest Detachment. Stan Korosec had debriefed

these two teams after their shift ended in the OPP garage at Forest. This radio transmission from Sergeant Korosec was sent at about 8:19 p.m.

As I discuss in this chapter, despite Inspector Linton's decision to wait for Constable Poole's statement to reach the command post before OPP officers were mobilized, this in fact did not occur. Instead, Inspector Linton decided to call in the Tactics and Rescue Unit (TRU) before he received accurate information on the incident involving the damaged car. He clearly acted precipitously and without proper intelligence. As Wayne Wawryk, an expert in intelligence, said at the hearings, it is risky to employ a use of force option to resolve a situation based on intelligence of unknown reliability. Doing nothing until a critical piece of evidence is assessed is a wise course.

## 13.2 Whose Car Was Damaged, By Whom, and How?

### 13.2.1 *The Altercation between Stewart George and Gerald George*

In the early evening of September 6 before 8:00 p.m., Gerald George drove toward the army camp and the park. Mr. George, a Councillor of the Kettle and Stony Point Band, had been to the area a few times that day. He said the purpose of his September 6 visits was to assess the number of officers in the vicinity of the park and to see the types of guns carried by the OPP.

Before dark, Gerald George travelled along East Parkway Drive in his sister's blue Grand Am Pontiac car. He noticed police vehicles in the Ministry of Natural Resources (MNR) parking lot on his way to the park. As he approached the intersection of East Parkway Drive and Army Camp Road, he saw some of the occupiers in the sandy parking lot, one of whom was Stewart George.

According to the evidence of Stewart George, Gerald George stopped his car and asked the occupiers for an update of what was occurring at the park. Stewart George was upset that Gerald George had the audacity to approach the occupiers after writing a letter to the editor of the *Forest Standard* newspaper, criticizing the "Army Camp Indians." As Stewart George said at the hearings:

... I looked at him, like, I couldn't believe it, you know, because of what he had put in the paper about those people, [t]he guys that were staying in the army camp, and I don't know why he c[a]me down there after he wrote that in the paper.

In the letter, Gerald George had criticized the occupiers for taking control of the army barracks and he referred to them in derogatory terms such as "animals"



and “army camp Indians.” The August 30, 1995, letter to the editor published in the *Forest Standard* newspaper is reproduced:

When I read your article last week about the natives that harassed the family on the Camp Ipperwash Beach it made me very angry. I am a councillor for the Kettle & Stony Point First Nation. *I am glad that these Army Camp Indians call themselves separate from my First Nation because I would not want any of my fellow band members to act like animals and give my home a bad name.*

*I do not refer to these jerks as Stony Pointers either because my grandparents were Stony Pointers, also my mother and uncles are as well and I am sure that they never acted this way.*

Therefore I will not insult my relatives by calling the people at CFB Ipperwash Stony Pointers.

*When the army pulled out of Camp Ipperwash, the actions that followed reminded me of the L.A. Riots.*

*The army camp Indians have strained relations between Kettle & Stony Point and the surrounding communities. We all do not act like the army camp Indians, so please do not think that all Chippewas act this way.*

Gerald C. George

Councillor

Kettle & Stony Point (emphasis added)

The insulting comments about the occupiers and his ancestors from Stoney Point angered Stewart George.

Stewart George (whose nickname is “Worm”) approached the car and asked Gerald George the purpose of his visit. When Gerald George began to respond, Stewart gave him “a slap” on the side of his cheek.

Gerald George immediately left in his car and from approximately twenty feet away yelled, “Worm, you’re going to get it.” Stewart George recounted, “I was angry”; “I threw a rock” and “hit his car.” The impact of the rock dented the back panel under the rear window on the driver’s side of the car. Gerald George left the area and drove down Army Camp Road.

Stewart George could not understand “why [Gerald George] came there in the first place” after what he wrote in his letter to the editor. Stewart George denied

he had “flagged” down Gerald George when he drove to the intersection of East Parkway Drive and Army Camp Road. He also denied that he verbally threatened Gerald George.

As mentioned, other Aboriginal men such as Glen Bressette, Wesley George, Dale Plain, and Nicholas Cottrelle were standing with or in the vicinity of Stewart George and witnessed the altercation. They corroborated Stewart George’s account that Gerald George, of his own volition, approached them in a car near the sandy parking lot and initiated the conversation. They heard Stewart George express his anger at Gerald George over the *Forest Standard* letter to the editor. They saw the two men holler at one another, and Stewart hit Gerald George in the face. Mr. Bressette, Mr. Cottrelle, and Mr. Plain also substantiated Stewart George’s statement that after Gerald George verbally threatened him, Stewart George threw a rock, denting the car. J.T. Cousins, who was standing about fifteen feet away, also saw the altercation but could not hear the precise words exchanged between the two men.

Nicholas Cottrelle was carrying a baseball bat at the time, but he does not think any of the other men had a bat or stick.

The testimony of Gerald George, also known as “Booper,” was similar to the evidence of Stewart George and the other occupiers who witnessed the altercation, with a few exceptions. Gerald George claimed that Stewart signalled him to stop his car at the intersection of East Parkway Drive and Army Camp Road, at which time Stewart confronted him with the letter to the editor of the *Forest Standard*. Gerald George claimed he could smell alcohol on Stewart’s breath.

Clearly agitated, Stewart said his father (Abraham George) lived in the occupied army base and he resented the reference to the occupiers as “animals.” Gerald George replied that his comments in the letter to the editor were directed to Aboriginal people who harassed people in the park. He chastised the men: “You guys shouldn’t be doing that kind of things to campers in the park, because it gets all over the place and it’s making us all look bad.”

It was at this juncture that Stewart George “punched” him on the side of the head. Gerald George claimed that he simply yelled profanities at Stewart George and had no recollection of threatening Stewart with words such as, “Worm, you’re going to get it.” Gerald George agreed that after Stewart hit the back panel of the car with a rock, he left the area: “I thought I’d better get out of there, because the other guys were advancing.”

Gerald George did not notice a baseball bat or stick in Stewart George’s hands at the time of the heated exchange. He agreed that of the four or five people congregated in the area, one boy held a stick or club; this person was likely sixteen-year-old Nicholas Cottrelle.



### 13.2.2 *Gerald George Reports the Incident to the Police*

After the altercation with Stewart George, Gerald George drove south on Army Camp Road. Mr. George decided to report the car damage from the incident to the police, as the insurance company would need a report when a claim was filed for the repair of his sister's dented car.

Constable Sam Poole and other OPP officers were stationed at Checkpoint "C" on Army Camp Road across from Sunnyside Trailer Park, as Gerald George approached the checkpoint before 8:00 p.m. in a "blue Grand Am." Mr. George was visibly upset by damage caused by the occupiers to the back panel of the car on the driver's side. Constable Zacher, Sam Poole's partner at the checkpoint, relayed the information regarding the damaged car to the command post.

Constable Poole sat in the passenger's seat of the dented car with Mr. George to take his statement. Vehicles began to drive back and forth on the road inside the army base near the parked car. Concerned that the car was highly visible to the occupiers and the driving activity would distract or intimidate Gerald George, Constable Poole suggested they move further off the road into the trailer park area.

On the officer's instructions, Gerald George backed his car into the nearby campground. Constable Poole took a statement from Mr. George at 7:56 p.m. Mr. George's rendition of events to the OPP was similar to his testimony at the Inquiry with the exception that he did not report to the police that Stewart George had hit him. He told Constable Poole that Stewart George had motioned him to stop the car at the intersection of Army Camp Road and East Parkway Drive, that he was angry about the letter to the editor in the *Forest Standard* newspaper, and that Stewart George's breath smelled of beer. He said Stewart George threatened he would "kick [his] ass." He reported that one of the guys in the vicinity had a "bat," but Stewart had had nothing in his hands before he threw the rock at the car.

Gerald George also told Constable Poole that he was a Councillor of the Kettle and Stony Point First Nation. It was evident to Sam Poole that Mr. George was distancing himself from the acts of the park occupiers. Mr. George told the officer that Stewart George, whose nickname was "Worm," threw a rock at the car. Although the damage to the car was not excessive — Constable Poole estimated it to be about \$500 — Mr. George was very upset because the car belonged to his sister. Although he mentioned that the letter published in the *Forest Standard* had upset the occupiers, details of the newspaper article were not described to the officer.

Gerald George testified that he did not disclose the assault by Stewart George because he feared that Stewart, in his inebriated state, might enter into a further altercation if confronted by the police. When Gerald George was later interviewed

by the Special Investigations Unit (SIU) in January 1996, he again did not inform the officers that Stewart George had struck him. Gerald George said at the hearings, “I just didn’t want any assaults being in the record, like, Natives fighting Natives.”

Constable Poole spent over half an hour with Gerald George, but not all the information conveyed by the Kettle and Stony Point Councillor was recorded in the police statement. The OPP officer deliberately omitted the description of weapons Mr. George claimed were in the possession of the occupiers. According to Constable Poole, Gerald George said the occupiers had “AK-47s with a 30 round mags duct taped to the back,” “Mini Ruger 14s,” and “hunting rifles.” Constable Poole considered Gerald George very conversant with different types of firearms.

The OPP officer had no reason to doubt the truthfulness of the information relayed by Gerald George. He described the Band Councillor as sincere. Constable Poole thought Gerald George had tried to take a “leadership role” when he attempted to speak with the Aboriginal occupiers in the parking lot. While Mr. George reviewed his statement, Constable Poole exited the car and returned to the checkpoint. At no time did Constable Poole speak directly to A/D/S/Sgt. Wright about the information conveyed by Gerald George. Detective Constable Dew continued the police interview with Mr. George.

As I discuss in the following pages, the police statement taken by Constable Poole relating to the car incident did not make its way to the command post until it was too late. This event highlights why this police operation would have benefited from a proper intelligence process. As Detective Sergeant Bell testified, all raw data should have been collected and analyzed by an intelligence officer, who would have seen competing versions of the events and who would have ensured that the correct version (the statement taken by Constable Poole) was communicated to the Incident Commander. Another fundamental problem was that the information about guns was not authenticated or verified by OPP intelligence officers.

There was miscommunication of this and other events to the command post. The Incident Commander decided to deploy the Crowd Management Unit (CMU) and TRU based on inaccurate and unverified information.

### **13.3 Detective Constable Dew Reports Weapons and “Women and Children” Leaving the Army Camp**

When Detective Constable Dew reported for duty at the Forest Detachment that evening at 7:55 p.m., he was instructed by Detective Sergeant Richardson to



meet Constable Poole regarding an allegation of mischief by the First Nations occupiers.

As Detective Constable Mark Dew drove to meet Constable Poole and Gerald George, he stopped at Checkpoint “D” at Army Camp Road and Highway 21. ERT officers at this checkpoint told Dew “women and children were leaving ... because there was going to be trouble” that night. The officers at the checkpoint expressed concern about their safety because they were in an “open area.”

Detective Constable Dew communicated this information to the command post at 8:27 p.m. He told Sergeant Cousineau that as he was driving toward the beach to take a statement, officers at the checkpoint near the main gate to Camp Ipperwash said, “[T]he women have come out and told them they’re removing all of the children from the park tonight because something’s supposed to happen in there.”

Detective Constable Dew mentioned he was contacting the command post by telephone because “we didn’t think that was appropriate for the airwaves.” ERT officers at Checkpoint “D” had concerns about transmitting this information over the radio. They feared that civilians could overhear the police communications on a scanner or other device. Sergeant Cousineau immediately relayed this information to Inspector Linton who replied: “I want a message to the TRU team to stay suited at Pinery. Can you get the TRU team?” And then the following exchange took place between Inspector Linton and Detective Constable Dew:

DEW: ... *the story from the main gate is the women have come across and told police that they intend to remove all the children from the army base tonight because something’s happening and they thought maybe that was worthy of note and they didn’t want that broadcast across the airwaves ...*

LINTON: *The women are saying they’re moving all the children out tonight, something’s gonna happen.*

DEW: *They’ve got all the children it looks like piled up at the main gate waiting for a ride out of there. (emphasis added)*

Because First Nations people believed the OPP were planning to confront the occupiers at the park, it was suggested that the women and children leave Ipperwash Park. The OPP, on the other hand, believed this evacuation of women and children signified that the Aboriginal occupiers had plans to engage in nefarious activities that night.

After the call with Inspector Linton, Detective Constable Dew met with Gerald George. The officer was dressed in civilian clothes. Mark Dew’s description of his discussion with Gerald George differed in some important respects

from the testimony of Mr. George. Mr. George told him the occupiers had guns, he described the different firearms, and he also said the occupiers were making Molotov cocktails. Detective Constable Dew said at the hearings:

*I remember clearly he says the words to me, You didn't hear this from me, but those guys have in there, and then he listed off some weaponry ... I remember him telling me about the types of guns, and that they were making Molotov cocktails ... (emphasis added)*

Detective Constable Dew recorded in his notebook a description of the weapons conveyed by Gerald George, but referred to him as an “anonymous source.” Dew explained, “I was concerned for his safety” because Mr. George lived in that community.

Detective Constable Dew claimed he did not have a photo album and disagreed with Gerald George’s testimony that Mr. George was asked to identify photographs.

According to Gerald George, he told the OPP officer he was a Band Councillor who had driven to the perimeter of the park to assess the situation. Constable Dew told him some of the occupiers were causing trouble and he pulled out a book that contained photographs of First Nations people. Some of the photos appeared to be aerial shots taken from a helicopter; Gerald George testified they were “pictures of all the guys.” He identified Stewart George (“Worm”) as the person who had thrown the rock at the car, but did not identify other occupiers of the park or army barracks.

The OPP officer asked Gerald George to disclose the name of the leader or spokesperson of the occupiers. Mr. George replied that he did not know. He was asked if the occupiers had firearms in the base or the park. Gerald George claimed he told the officer he had not seen guns in his drives to the base or the park. Mr. George then told the OPP officer he owned hunting guns, including a Mini Ruger 14, a semi-automatic gun, to hunt deer, and that the occupiers probably had similar firearms at the army base. As Gerald George explained at the hearings, this was merely an assumption on his part.

Mr. George insisted he did not tell Detective Constable Dew the occupiers had guns in the park. He also denied telling the OPP officer the occupiers were building gas bombs inside the army camp. He claimed he never told Detective Constable Dew the occupiers possessed semi-automatic rifles with 30-round detachable clips. He further denied telling the OPP officer that the First Nations occupiers planned to burn the buildings.

Gerald George maintained this position at the hearings, despite the fact that immediately after the interview Detective Constable Dew communicated to the



command centre that someone had reported the occupiers had hunting rifles, semi-automatic guns, and might be building gas bombs.

Several occupiers, including those who had not witnessed the incident between Stewart and Gerald George, such as Kevin Simon, saw Mr. George talking to OPP officers. Glen Bressette said he and others could see Gerald George's "mouth really flapping away to the cops" at the police checkpoint. As Glenn George travelled on Army Camp Road from the built-up area at about 8:00 p.m., he wondered why the Kettle Point Band Councillor was having a conversation with the police. Similarly, Kevin Simon, who saw Gerald George exchanging words with the officers at the checkpoint on Army Camp Road south of Matheson Drive in the area of the trailer park, was suspicious. Kevin Simon was aware of Gerald George's letter to the editor that had been published at the end of August 1995. He disagreed with a number of comments in the letter and believed Gerald George unfairly characterized the Stoney Point people. When he saw Mr. George conversing with the police on the evening of September 6, he was worried Mr. George would mislead the officers about the intentions of the occupiers. Mr. Simon was anxious that Gerald George's comments to the police would create a negative and false impression of the occupiers' plans.

Detective Constable Dew was not aware that Gerald George had recently written a letter to the local newspaper criticizing the occupiers. Nor was he aware of the tension between the Chief and Council of the Kettle and Stony Point Band and the occupiers at the army base and the provincial park. Nor did Mark Dew read the statement of Gerald George taken by Constable Poole. Detective Constable Dew should have been aware of this information. It was critical to an evaluation of the information relayed by Gerald George. Had a trained OPP intelligence officer been on duty, the officer could have taken measures to follow up and verify the statements made by the Band Councillor. At this point, the reliability of Gerald George's statement would have been questioned.

Several First Nations witnesses were questioned at the hearings on whether they saw about ten Aboriginals damage a non-Native civilian's vehicle with baseball bats at about the time of or shortly after the incident between Stewart and Gerald George on September 6. The witnesses repeatedly stated they did not see such an incident. As I discuss in detail in the following section, there was repeated miscommunication amongst the OPP officers regarding the Gerald George — Stewart George altercation. This had a serious impact on the decisions made by the police later that evening. As Glen Bressette and other First Nations witnesses testified, if this comment about a civilian's car was in reference to the incident with Gerald George that evening, it was not an accurate description of what transpired. Stewart George reiterated that he alone hurled a rock which fit in the palm of his hand, and that it was directed at Gerald George's car, not a non-Native

civilian motorist. Similarly, Gerald George, who later learned there had been a report of a woman attacked by people with baseball bats, said at the hearings:

We couldn't find out who the lady was. We thought it was a non-Native but I don't really think she existed. I think they mixed up that report with me and brought in the bat. I don't know where it c[a]me from. I think they might have mixed it all up. Maybe a lady come along there and after me or something [and] the cops messed it up, but I'm not sure where it c[a]me from.

Neither Inspector Carson nor Inspector Linton read Gerald George's statement to the police. Nor did these OPP Inspectors receive accurate information on what had transpired that night between Mr. George and the occupiers. There was verbal transmission of this incident within the OPP, which resulted in distortion of the information relayed by Gerald George to OPP officers Sam Poole and Mark Dew. There was clearly a failure in OPP intelligence that resulted in faulty and precipitous decisions at the command post that night. Both the CMU and TRU were deployed and there was a confrontation between the OPP and First Nations people.

The OPP made the decision to deploy the CMU and TRU on incorrect and unreliable information. Later that night, just before Dudley George's death, Detective Constable Dew had an opportunity to share with Inspector Linton the information he had received from Gerald George. He did not tell Dale Linton that a stone had been thrown at a car and that it was directed at Gerald George, a First Nations Councillor at Kettle Point Reserve. Another missed opportunity. But perhaps it was too late. The CMU and TRU had already been deployed. Minutes later Dudley George was shot in the confrontation between the OPP and the Aboriginal occupiers.

At the hearings, Gerald George said he regretted writing the statements in the letter to the *Forest Standard* that implied the occupiers were "jerks" who behaved like "animals." He acknowledged that Chief Tom Bressette was unhappy with the content of the published letter and had chastised Gerald George for not discussing it with him before sending it to the newspaper. Mr. George understood his letter to the editor could increase the tension and racism against First Nations people.

Stewart George was ultimately charged with mischief for his conduct with Gerald George that evening.

After his interview with Gerald George, Detective Constable Dew contacted the command post at approximately 8:41 p.m., this time from the living room of a private residence. He described to Sergeant Graham the weapons Mr. George claimed were in the possession of the First Nations occupiers:



DEW: ... *I just talked to a fella down here who's been in and eyeballed some of the weaponry that they have. Do you have an update on any of this stuff?*

GRAHAM: I'm not sure.

DEW: Okay. They have —

GRAHAM: Who's this?

DEW: It's Mark Dew.

GRAHAM: Okay.

DEW: *He has seen four SKS.*

GRAHAM: SKS.

DEW: *Yeah. Those are Russian semi-automatics.*

GRAHAM: Yeah.

DEW: *They have thirty round detachable clips, and a couple of them have fixed ten round clips.*

GRAHAM: Yeah.

DEW: *They've got two Ruger mini-fourteens with thirty round mags.*

GRAHAM: Two Ruger fourteens.

DEW: Yeah. He says —

GRAHAM: With how big of clips?

DEW: Thirty. Three-zero.

GRAHAM: Yeah.

DEW: *Hunting rifles with scopes of course.*

GRAHAM: Yeah.

DEW: *He thinks they're up to making gas bombs. You heard the story about ... moving the children out the front is supposed to happen tonight, eh?*

GRAHAM: Okay. And gas bombs and they have been moving the children out.

DEW: *Yeah. The women from the army base came across and told the ERT team right there at the gate that they are moving*

*the children out tonight because something's supposed to happen in there tonight.*

GRAHAM: In the army base?

DEW: Yeah.

GRAHAM: *Maybe that's why the unfriendlies are showing up from Kettle Point.*

DEW: *Absolutely, positively. Now this guy that I just spoke to says, in his estimation, what they are going to do is they're going to start burning buildings in the army base.*

GRAHAM: *Who are?*

DEW: *The people that are occupying it.*

GRAHAM: The people that ...

DEW: [Inaudible]

GRAHAM: Yeah. That makes a lot of sense.

DEW: That's what they're going to do. Apparently if anymore of the Kettle Point Band Council shows up there, they're going to start burning buildings. I don't know if that's a [ruse] to draw your attention away from that back corner down there. *Mumbly<sup>2</sup> says there's still a guy inside the kiosk with the door shut and the windows and the curtains drawn, eh?*

GRAHAM: Uh-huh.

DEW: *You can't see what he's doing but every once in a while he comes and flips out. I'd be worried about him being a sniper kind of a guy.*

GRAHAM: Uh-huh.

DEW: And that's everything I know for now, Rob.

GRAHAM: Okay. And that's at eight forty three. Okay. Thank you, buddy.

DEW: Now where do I go with this from — for the guys out here? Do you handle that from there?

GRAHAM: I'll let Stan know and he can let them know what's going on. (emphasis added)

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2 "Mumbly" is Chris Martin's nickname.



Sergeant Graham conveyed this information to Inspector Linton. The scribe notes at 8:43 p.m. say:

*Rob Graham reports from Mark Dew that they are evacuating women and children. Preparing all night for Kettle Point and Stony Point. If they have any problems with Kettle Point [Councillors], they will set building on fire.*

*Reports of numerous guns, 4 S.F.F.'s [sic], 30 detach. clips, 10 fixed rd. clip, 2 Ruger 14's, 3 ord. clips, hunting rifles, gas bombs. (emphasis added)*

After the call with Sergeant Graham, Detective Constable Dew returned to the Forest Detachment.

### **13.4 Inadequate Intelligence: A Serious Failing at Ipperwash**

Detective Constable Dew returned to the Forest Detachment and informed Detective Sergeant Bell a “source” had advised him weapons were at Camp Ipperwash: four SKS rifles, two Mini Ruger 14s with thirty-round magazines, numerous hunting rifles with scopes, and possibly gas bombs. To compound the problem, Mark Dew was unaware of the tension between the Band and the occupiers, and he did not know about Gerald George’s letter to the *Forest Standard* criticizing the occupiers.

As Detective Sergeant Bell said at the hearings, a criminal check should be done to determine whether the informant has a record of deceit, which would lead the officer to believe he was not truthful. It should also be determined whether the informant had provided information to the police in the past that was trustworthy and confirmed as reliable. An assessment should also be done of whether this person had “ulterior motives” to provide this report. This event highlights the importance of an intelligence system in which raw data is analyzed and authenticated before it is transmitted to the Incident Commander. This evaluation is fundamental to an assessment of the weight to attach to the information.

Detective Sergeant Bell said that if he had known this informant had in the past publicly expressed disapproval of the occupiers and called them derogatory names, this would have had an impact on his assessment of the reliability of the evidence. The fact that Gerald George had not been in the army camp or the park since the occupation began on September 4 was also important in assessing the reliability of the information, as well as the fact that he had not been in the park or the army base for a significant period prior to September 4.

Detective Sergeant Bell did not follow up on this information. He claimed he did not have “the requisite information to conduct the proper follow-up” and further commented, “that goes back to my critique ... with regards to one single source of intelligence and the lack of filters.”

As Bell acknowledged, there was no standardized written protocol with respect to intelligence reports. Detective Sergeant Bell agreed it is more prudent for this sensitive information to be transmitted in written form: “If it’s written down in its truest form, that’s the best method of communication.” Intelligence conveyed verbally can result in inaccuracies in the transmittal of information and a “broken telephone” scenario, which is precisely what occurred the night of September 6. Had information from Gerald George relating to the car incident been transmitted in written form on the evening of September 6, it would have minimized the incorrect information relayed to senior officials and to the Incident Commander who was responsible for making the decision to deploy the CMU and TRU to the vicinity of Ipperwash Park. Similarly, had the Gerald George information regarding the existence of guns in the park been transmitted to an intelligence officer, it would have been assessed from a reliability perspective. It was only in 2006, when he testified at the Inquiry, that Detective Sergeant Bell learned that Gerald George was the source of the weapons information. Had Bell known the Band Councillor had provided the information about the weapons and the circumstances surrounding it, the Detective Sergeant would have considered its value of “limited weight.”

The OPP considered the availability of weapons a great risk to public safety. In the previous forty-eight hours, an officer had seen a butt of a rifle, other officers had reported hearing automatic gunfire, and there had been a report of a civilian’s car being damaged by baseball bats. But, as Don Bell acknowledged, at 9:15 p.m., he had no reliable information that there might be offensive activity by the occupiers that evening.

Earlier that evening, information from Detective Constable Dew had been relayed to Detective Sergeant Richardson: women and children were being evacuated, the different types of weapons possessed by the occupiers, and “something about burning some building.” Detective Sergeant Richardson did not verify any of the information on the weapons or gas bombs allegedly in the possession of the occupiers. Nor did he make any efforts to ensure the statement taken by Constable Poole was brought to the Forest Detachment. The general practice was that the officer taking a statement would bring it to the Detachment. And at no time during the evening of September 6 did Trevor Richardson or other officers review the statement made by Mr. George. Again, a serious failure in intelligence with very serious consequences.



The information from Detective Constable Dew was not followed up or placed in the intelligence cycle by Detective Sergeant Bell, Detective Sergeant Richardson, or other OPP officers. As Don Bell said at the hearings, “I don’t believe there was an intelligence report generated by anyone. And again, that could be a fault of the process.”

Don Bell agreed the collection phase of the intelligence cycle (stage 2) could have been done better in this OPP operation. He expected Mark Dew to analyze the information from Gerald George before he passed on the information. The context of this information was important, namely, that it was a personal dispute between Stewart and Gerald George regarding the publication of a letter to the editor in the local newspaper. This should have been considered. The informant may have had an ulterior motive and that should have been weighed in the evaluation process regarding the reliability of the information.

An essential purpose of the intelligence cycle is that the Incident Commander has reliable and accurate information. Once the information is processed through the intelligence cycle, the ultimate end-user of the information is the Incident Commander. Tactical and other critical decisions are based on this information.

As Don Bell said, various sources of information “were being fed up through to the Incident Commander — [a]nd this did ... cause difficulty.” OPP Commissioner Boniface agreed. There was not one trained intelligence officer responsible for presenting all the processed intelligence to the Incident Commander. Moreover, Inspector Carson did not have specific training in intelligence as Incident Commander at Ipperwash.

Wayne Wawryk, the police intelligence expert who testified at the hearings, discussed the importance of having one person communicating the processed intelligence to the Incident Commander, having an adequate number of intelligence officers to analyze the information, and ensuring that the Incident Commander has training in intelligence. The officer who takes all the processed intelligence to the Incident Commander should be responsible for all the investigators. The importance of having one officer report the intelligence to the Incident Commander was stressed by Mr. Wawryk: it preserves the integrity of the information, it is easier for the Incident Commander to engage in “dialogue” with that officer, and it prevents the diffusion of the intelligence process. Mr. Wawryk said:

This diffusion of the intelligence process does not bode well for the Commander and his or her ability to make decisions ... [I]f you have a culture where everything is being fed to the Commander without the proper attention to analysis, filtering, detail, then the Commander will be listening to many people at once. It’ll be more chaotic, more confusing.

The lack of one officer to communicate the processed intelligence to the Incident Commander, inadequate analysis of information received by the OPP, no intelligence training of the Incident Commander, and raw information communicated to the command post from an array of sources are some of the deficiencies in the OPP operation in Ipperwash that undoubtedly contributed to this tragedy. I acknowledge the efforts of the OPP since September 1995 to address these deficiencies. Some of these changes in OPP intelligence are discussed in Part II of my report.

### 13.5 Occupiers Prepare for the OPP

Before sunset, First Nations people in the park became increasingly anxious about the OPP's plans for that evening.

Cecil Bernard George ("Slippery") was eating his dinner at Kettle Point when Gerald George arrived at his home. He told Cecil Bernard many police cruisers were on Highway 21 heading toward the army camp. Cecil Bernard George immediately jumped into his blue Chevy pickup truck and headed toward the park. He was very concerned about his sister Gina Johnson and his brother Stacey George.

The police stopped Cecil Bernard George at the checkpoint at Highway 21 and Army Camp Road. He noticed some officers wore grey uniforms, not the standard blue police uniforms, and that they seemed "very tense" and "real serious."

As he drove toward Ipperwash Park, Cecil Bernard was "pretty nervous" watching "all the cruisers" outside the park area. Mr. George parked his truck in the sandy parking lot. The purpose of his visit was to ask the occupiers if they needed anything, and to give them "reassurance" and "let them know that we're still there with them," "always going to be there for them." As Mr. George said at the hearings, "they were [his] friends and family."

As Cecil Bernard approached the park fence, he saw about fifteen to twenty First Nations people in the park. He told the occupiers "there was a build-up of police all around the area, bigger than usual." Mr. George "just told them to be careful" because he had had a "funny feeling."

Kevin Simon, Gabriel Doxtator, and Wesley George were present when Cecil Bernard George arrived at the park. The occupiers decided that walkie-talkies and scanners to listen to police communications would be good to have at the park that evening. After spending about ten minutes at the park, Cecil Bernard George returned to Kettle Point to retrieve some of these supplies.

In preparation for the possible arrival of the police, David George decided to return to the barracks to get a powerful spotlight he used for night hunting. The park was becoming dark and he wanted the spotlight to illuminate police officers in the vicinity of the park.



The occupiers also built bonfires. Dave George and Stewart George instructed J.T. Cousins and Leland White to build big fires to light up the park area. There were two large bonfires inside the park, one near the turnstile and one near the lake. Old picnic tables covered with layers of paint were thrown into the fires, which, as Roderick George said, burned for a long time. The occupiers also collected rocks and sticks and placed them inside the park at the fence line in order to defend themselves from the police if this became necessary.

Nicholas Cottrelle and other occupiers carried baseball bats and sticks in anticipation of the police coming to the park to confront the First Nations people.

The Aboriginal people were “real uneasy” and “scared,” not knowing what the police were intending to do that evening. Elwood George “sensed something was going to happen” because of the “very noticeable increase” in the number of police in the area. He and Robert George were among the people who suggested the occupiers drive back and forth to “get a little bit of movement within the park to lead the police to believe” there was “more of us there than there actually was.” As mentioned, some First Nations people drove their cars and Glenn George drove the dump truck between the park and the army barracks. Many of the First Nations people believed the OPP were planning to remove them from the park. As Stacey George said, he and others believed the police were “going to come” into the park and “try to arrest” and “drag us out.”

Stewart George decided to return to the barracks to get his dog. Robert Isaac offered to drive him to the army camp in the “OPP WHO” car.

With the assistance of Pierre George (one of Dudley’s brothers), Marcia Simon tried to move her trailer into the park. They were unsuccessful. As Ms. Simon explained, “I wanted to get my trailer moved down there to go in between our people and the police.”

Glenn George had an “eerie feeling” after he saw Kettle Point Councillor Gerald George speaking to the police following the Stewart George incident. Councillor Cecil Bernard George had also come to the park to offer his assistance and support and ask if he could bring any supplies to the occupiers. This “strange” and “eerie feeling” deepened, and it was at this point that Glenn George decided to speak to Clifford George at his home.

As the evening progressed, it was suggested that perhaps the women and children should leave the park for their protection. Some children, such as Harley George, returned to his home simply because there was school the next day.

First Nations people were stationed at different observation points in the park as “look-outs.” Their role was to report back to the other occupiers on the OPP’s activities.

The mood and atmosphere clearly changed at the park on the evening of September 6, 1995. The occupiers believed the heavily armed OPP would confront them that night. Unfortunately, their fears were realized.

The OPP observed much of this activity and it increased their concern that the occupiers were planning “offensive” activities for that night. The large bonfires, the activity in the kiosk, the movement of cars and the dump truck between the park and the camp, and other actions by the Aboriginal people reinforced their belief. The Aboriginal people were deliberately trying to create the illusion that there were many more occupiers in the park than there actually were. These actions caused the police to believe the Aboriginal people intended to engage in nefarious activities when, in fact, they were simply making “defensive” preparations for an “offensive” move by the OPP on the First Nations occupiers. Unfortunately and tragically, there were serious miscommunications and misunderstandings not only by the Ontario Provincial Police but also by the Aboriginal people.

### 13.6 Mark Wright Conveys “Escalating Events” to Carson and Complains Linton is “Waffling”

While Inspector John Carson was having dinner at a private residence in Forest, A/D/S/Sgt. Wright contacted the OPP Inspector to inform him of the escalating events at the park that evening. Mark Wright said: “We got a bit of a situation here ... right at the curve there where the picnic tables are ... I just took care of the public for now, but if we don’t deal with this, we’re back.”

The following exchange occurred between A/D/S/Sgt. Wright and Inspector Carson:

WRIGHT: *They got about eight of them there with baseball bats right on the road edge you know.*

CARSON: Well, who are they?

WRIGHT: Well, I don’t know. Just a bunch of Natives, you know what I mean. (emphasis added)

A/D/S/Sgt. Wright was describing his encounter with First Nations people on the roadway outside the sandy parking lot earlier that evening. It was Inspector Carson’s understanding from this conversation that there were eight people with baseball bats on the road edge in close proximity to the asphalt surface. Mark



Wright conceded at the hearings that he had inaccurately conveyed to Inspector Carson that eight Aboriginal people carried baseball bats when, in fact, it was only about four people.

Mark Wright also told Inspector Carson that Aboriginal people had “pelted” a car. As he was speaking to John Carson, Mark Wright learned that the school bus and dump truck were now moving toward the road, and his “concern was greater now than it had been moments before.” He reported to Inspector Carson, “*The school bus and the dump truck look like they’re moving towards the road now. So they’re going to try and take that position again. We got that house there ...*”

Mark Wright was concerned about the first cottage west of the sandy parking lot on East Parkway Drive. He was also worried that the cottagers who had been carrying signs in the MNR parking lot that evening would return and confront First Nations people in the park. A/D/S/Sgt. Wright believed the occupiers had committed a number of criminal offences, that public order had been threatened, and that the police “needed to deal with this immediately.”

Wright told Inspector Carson the ERT day shift and canine team were present. He described Dale Linton’s position, namely, if “the guys who threw rocks” can be identified, “we can do something but if they can’t, then they’re not doing anything wrong.” Inspector Carson replied, “[I]f they’re going out there with baseball bats, you got them for weapon dangerous.” Mark Wright, frustrated with Inspector Linton’s position and indecisiveness, said:

You got them for weapon dangerous, you got them for fucking mischief to the road, you got them for unlawful assembly. We got that house right next door ... They got the school bus there and the dump truck right there moving towards the roadway.

When Inspector Carson asked what Dale Linton wanted to do, A/D/S/Sgt. Wright said:

*Oh, fuck, I don’t know, waffle. We’ll be here till fucking daylight figuring it out and daylight’s a-wasting. (emphasis added)*

Mark Wright agreed that he was frustrated. He was agitated with the “confusing mixed messages from Inspector Linton,” whose first instructions were “we were going to go down there” with “helmets and K-9,” to “we’re not going to do anything because they’re not doing anything wrong if we can’t identify the individual who did the damage to that vehicle.” A/D/S/Sgt. Wright believed the situation was escalating and felt that the OPP “needed to deal with this quickly”;

“we needed to deal with this right away and [Inspector Linton] seemed to be moving from an overly aggressive position to the farthest from that, a very passive position” — “hence my statement with respect to waffling.” Dale Linton was “waffling ... in his general inability to make a decision.”

A/D/S/Sgt. Wright was also concerned that the night’s darkness was moving in: “I recognized” that to do this in “daylight was much better than to do this in the dark.”

But why the haste to make a decision to deploy the police? Why did the OPP “need to deal with this quickly”? It was essential that the OPP obtain accurate information regarding the damaged vehicle before it made these decisions. A/D/S/Sgt. Wright’s reaction was to act before the OPP had verified the information and received proper intelligence.

Inspector Carson offered to return to the command post. He told A/D/S/Sgt. Wright he was having dinner at a residence in Forest. He also wanted to “get together” that evening to discuss Mark Wright’s evidence the following morning in Sarnia on the injunction application.

Mark Wright then asked: “What if [Dale Linton] asks me what did you say? What do you want me to tell him?” Inspector Carson replied:

CARSON: Well, it’s not my [inaudible].

WRIGHT: *Don’t you say we go get those fucking guys?*

CARSON: Well, we got to deal with them. We can’t let them out in that area with that stuff. (emphasis added)

A/D/S/Sgt. Wright tried to explain this aggressive language at the hearings. He said, “Don’t you say we go get those fucking guys?” meant Aboriginal people should be moved out of the sandy parking lot and into the park; if the occupiers refused to return to the park, the OPP would arrest them.

A/D/S/Sgt. Wright, the second in command to the Incident Commander, repeatedly used aggressive, inappropriate, and military language in communications with OPP officers as well as others, such as Ministry of the Attorney General (MAG) lawyer Tim McCabe. When OPP Commissioner Gwen Boniface listened to some of these recordings, they were a surprise to her. She agreed the language used by Mark Wright had the potential to inflame the situation at Ipperwash.

This is one of several transmissions in which Mark Wright used profane, aggressive language to describe possible police actions and to describe the First Nations occupiers in the park. The objective of Project Maple was to negotiate and resolve the occupation by peaceful means. This language clearly did not further



this goal. As second in command, Mark Wright should have acted and spoken in conformity with the OPP objective, namely to resolve the occupation by peaceful and non-aggressive means. Given his rank and position in the Ipperwash operation, he should have used language to promote that goal. His words likely had an impact on the officers and others to whom he spoke, which unnecessarily increased the tension and inflamed the situation at Ipperwash.

Inspector Carson made it clear in this call with A/D/S/Sgt. Wright that if Inspector Linton wanted him to return to the command post, he must specifically make that request. As the telephone call came to an end, Wright lowered his voice and said, “[H]e’s calling out TRU” Inspector Carson quickly replied — if Inspector Linton is calling out TRU, “you advise him I should be notified.” He wanted to “make sure Inspector Linton clearly understood that if he was making that call,” Inspector Carson should be contacted.

Mark Wright found himself in a difficult situation; he was talking with one OPP Inspector about the actions of another Inspector. Mark Wright had concerns about using the Tactics and Rescue Unit (TRU), and he was exasperated with Dale Linton’s “bouncing around”:

I felt that I was in a very difficult situation right there because they were both [I]nspectors and I was talking to one about the actions of the other. And I was concerned about his decision, that he was calling out the tactical team, that I didn’t think that was appropriate and it caused me concern ...

It just didn’t make sense to me to use a Tactical Rescue Unit to deal with a number of individuals, some of [whom] may be armed with bats, or axe handles, or whatever, on the roadway and on the sandy parking lot. My experience and understanding of the Tactical Rescue Unit was you didn’t engage them as an arrest team.

Inspector Carson was very troubled by Inspector Linton’s decision. He said at the hearings: “I have to tell you that when I was advised that he was calling out TRU, it certainly caused me some concern”; it “raised my anxiety level significantly.” To describe Inspector Linton’s decision as surprising is an “understatement.”

Inspector Carson could not understand why Dale Linton made the decision to use TRU: “I just couldn’t connect the dots. It didn’t make any sense ... [A] tactical response is a significant step.” John Carson explained:

*The criteria for calling out a tactical team normally involves a threat to life ... People on the roadway with a baseball bat falls far short of*

*that criteria. In my mind, the big question for me is, what is so serious here that now we've jumped from checkpoints to a tactical response for people who are out on the roadway with baseball bats? It just made no sense to me. (emphasis added)*

Inspector Carson believed that the ERT team were the appropriate officers to arrest the Aboriginal people who refused to leave the sandy parking lot: "The point I was trying to make is ... the Tactics and Rescue Unit would not be the appropriate individuals to be doing that. It would be a matter for the ERT team, the people who were providing checkpoints, to deal with that." TRU officers are trained in the use of fairly sophisticated weapons and it is the unit of last resort. As Inspector Carson explained, "it's a matter of using the right tools for the right job."

A/D/S/Sgt. Wright did believe that, although the OPP needed to go to the sandy parking lot to "deal with them," resort to the TRU team was unnecessary and inappropriate. In his view, the occupiers were

... clearly committing criminal offences ... [I]f we went down there and they were still there doing exactly the same thing that they were when I was there, then they would be committing offences and we could arrest them. However, if they ran back into the park, then we would never run back into the park after them because that was the line in the sand as it were. We weren't going to go in the park in any way, shape, or form, so that would have been fine too. I mean the problem would have been solved one way or another. As soon as they're off the roadway and they're not a threat to the people there or the property there and they're back in the park, then we're back to status quo.

At 8:15 p.m., Inspector Linton paged John Carson. In the background, Mark Wright can be heard asking the civilian operator to find out from the officers if the "stones" were "coming from the individuals at the curve." Constable Zacher, Sam Poole's partner, sent a radio transmission a few minutes later that the victim had in fact identified a suspect in the area.

### **13.7 Inspector Linton Instructs the CMU Commander and TRU Team Leader to Report to Forest Command Post**

There was discussion in the command post about the preparation of ERT officers for a possible deployment of the CMU. Sergeant Stan Korosec and A/D/S/Sgt. Mark Wright knew it was necessary to have a trained Incident Commander lead



the Crowd Management Unit. They recommended Staff Sergeant Wade Lacroix who was in Petrolia, about twenty minutes from the Forest Detachment. Sergeant Korosec contacted Staff Sergeant Lacroix on Inspector Linton's instructions.

Wade Lacroix was at his home with his family at the time. Sergeant Korosec told him Inspector Linton wanted him to report to the Forest Command Post for a possible deployment of the CMU.

It was at this time that Sergeant Korosec instructed the ERT day shift (Teams 3 and 6) to return to duty at the Forest Detachment.

At approximately 8:20 p.m., Acting Staff Sergeant Kent Skinner was told that Inspector Linton wanted the TRU team at the Forest Command Post for a briefing. Stan Korosec told the TRU team leader that First Nations people at Army Camp Road and East Parkway Drive had "trashed" a car with "baseball bats" as it passed the intersection. This information was both inaccurate and exaggerated. As discussed, a rock had been thrown by one person at a car driven by Band Councillor Gerald George who had written a letter criticizing the occupiers to the editor of a local newspaper. Sergeant Korosec also told him about "activity inside the park" — the school bus and dump truck had been moved to this area.

This was the first notification Acting Staff Sergeant Skinner received that his TRU team might be deployed to Ipperwash Park. Kent Skinner "attached quite high reliability" to Sergeant Korosec's report about the trashing of a civilian's car with baseball bats. The TRU leader understood that this was one of the factors that triggered the decision to deploy the TRU team. This information was relayed to his TRU officers. Again, unconfirmed mistaken information that had not been analyzed or processed through the intelligence cycle was relied on by the OPP to make critical decisions.

### **13.8 Inspector Carson Tells Inspector Linton Not to Deploy TRU**

At the beginning of the telephone call at approximately 8:20 p.m., Inspector Linton tells Inspector Carson, "[W]e're heating up big time. I just thought I would let you know ..." He described "about eight guys on the road" (at the end of Army Camp Road), the damaged car, and said they were waiting for the statement from the victim. It is clear from this call that Inspector Linton mistakenly thinks the victim is female when, in fact, it is Gerald George: "So we just got a statement now. *She* says that they were hassling *her*." Inspector Linton tells John Carson the TRU team has been called in and the "eight or so people blocking the roadway" will likely be arrested:

*... now they've got the school bus down in that corner. They're bringing a dump truck in. They're in the kiosk with the windows down so they're waiting for us to do something. So I just — they called the TRU team in and ... well, I'll wait till I get the statement. We're probably going to go down and arrest that group of eight or so people blocking the roadway, and there's no doubt ... they're waiting for something. So it's a little bit vulnerable. So I'll suit the TRU up heavy and put them in. So they're [e]n route here now. (emphasis added)*

The two OPP Inspectors had difficulty hearing each other and resumed their telephone conversation on a ground line. John Carson asked Inspector Linton why he was calling out TRU, the Tactics and Rescue Unit. In unequivocal language, he tells Inspector Linton not to use the TRU:

CARSON: What are you going to do with them?

LINTON: *Well, TRU is probably going to end up going in and doing an arrest.*

CARSON: *Dale, don't do that.*

LINTON: No.

CARSON: *Don't do that. If you do that we are in trouble, okay. And are you asking my advice or are you just informing me here? We better get this straight.*

LINTON: No, we need to discuss this.

CARSON: Okay. Do you want me to come in?

LINTON: Well ... *why shouldn't we use, like, what we've got ...*

CARSON: Well, *what are you going to achieve by using TRU that ERT can't do?*

LINTON: Well ...

CARSON: If somebody goes down, then what are you going to do?

LINTON: Like I think you got a buildup inside, and that's my concern. It's not going to arrest these eight guys. We were going ...

CARSON: Oh, oh ...

LINTON: With ERT, once we got a statement. *My concern is that you have the school bus moving down there, you've got the dump*



*truck moving down there, and you've got people in the kiosk pulling the blinds all down and I think there's ... a threat here of maybe sniper fire, or like they're doing something inside getting ready for us.*

CARSON: Okay. Well, okay. Well, that's fine. *Let's evacuate those houses if you think ...*

LINTON: Okay.

CARSON: *There's a threat of that nature, but don't go in there with TRU. If you go in with TRU and somebody gets hurt, we have nobody else to get them out.*

LINTON: No. *What I'm doing is I'm getting TRU to come here.*

CARSON: *Well, I wouldn't even do that.*

LINTON: No.

CARSON: If you bring that team up, you [have] got to be ready to deploy them.

LINTON: Well, my thought ... is if I send ... the ERT guys in to arrest these eight people ...

CARSON: Yeah.

LINTON: And all hell breaks loose ...

CARSON: Yeah.

LINTON: And I've got TRU suited and close by.

CARSON: Well, that's fine, but *I would leave them in the Pinery Park. They're closer from the Pinery than they are from Forest, and then you're going to create a media event with the TRU team truck sitting in town here.*

LINTON: *Okay. So ... I'll suit them up and leave them in Pinery then.*

CARSON: *I wouldn't do any more than that for the time being.*

LINTON: Okay. And then we'll do the arrest with the ERT guys?

CARSON: I would. I'd call out all sixty of them if you have to ... Whatever's necessary, we'll do that. But I would ...

LINTON: All right.

CARSON: *I tell you keep them in reserve.*

There were several reasons Inspector Carson tried to persuade Dale Linton to change his mind. First, the TRU team is “the tool of last resort. It’s the most offensive skill set that we have available to us.” In Carson’s view, the events at Ipperwash “require[d] a response of the uniform officers of ERT,” not the TRU team. Second, John Carson was worried that “bringing the TRU team trucks up, the big cube vans with ‘police’ all over them, was going to attract an unnecessary amount of attention and escalate the tension in that area that already exists.”

And third, Inspector Carson thought the TRU officers should remain in reserve in the event the ERT team required assistance: “[I]f we used the tactical team and the officers went in there and attempted to make the arrests, which they certainly have the capability of doing, and if one of them were hurt or we did come under fire, we have no other unit that’s capable of going in and extracting them.” John Carson suggested the nearby cottages be evacuated if Linton was concerned about residents adjacent to the sandy parking lot. But Inspector Carson firmly said: “Don’t go in there with TRU.”

Inspector Carson convinced Inspector Linton TRU should not be brought to Forest. Dale Linton agreed to “suit them up” and leave them in Pinery Park. Carson urged Inspector Linton to “keep [TRU] in reserve.”

John Carson offered to return to the OPP Command Post, but Inspector Linton did not think it was necessary. Inspector Carson was in a “quandary”:

... I asked Inspector Linton if he wanted me to return, and I sensed there was some anxiety around whether he wanted me to or not. And at the same time, I was concerned about what appeared to be an escalation of the activities in the area. So at the end of it, I returned to the command post.

Inspector Carson drove to the OPP command post shortly after the call and arrived before 8:30 p.m.

Inspector Carson did not see Gerald George’s statement when he returned to the command post that evening. He also doubts Inspector Linton read Constable Poole’s interview with Gerald George. There is a reference to only one bat in the police report. And significantly, the statement says a young man, who was in a group about thirty-five feet away from Mr. George’s car, held the bat. That person was sixteen-year-old Nicholas Cottrelle. There is no suggestion that the bat made contact with the car. Nor is there any suggestion that the bat was used as a threat, or that Gerald George felt threatened by the bat.

It is clear from Mr. George’s statement that the damage to the car was caused by a single rock, not a stick or bat. Yet on the night of September 6, Inspector



Carson believed a female was driving the car and that her vehicle had been struck with bats. He later learned, after Dudley George's death, that this information was inaccurate; that in fact a male was the driver of the car, a single rock caused the car damage, and it was an altercation between two Aboriginal people, a Band Councillor and a Stoney Point occupier.

This incident was important in the decision to deploy the police to the sandy parking lot. It was a critical factor that resulted in OPP officers marching down East Parkway Drive toward the Aboriginal occupiers in Ipperwash Park that evening. This decision by the OPP was based on inaccurate and unverified information. In the next chapter, I describe in detail the confrontation that took place between the police and the occupiers in which Dudley George was shot and died.

### **13.9 TRU Instructed Not to Proceed to Forest**

Sergeant Korosec, who was at the command post, tried to contact Acting Staff Sergeant Skinner to stop the TRU team from moving from Pinery Park to the Forest Detachment at approximately 8:32 p.m. Incident Commander Linton had changed his mind and only wanted TRU Leader Skinner to come to the Forest Command Post. As the operator tried to connect Sergeant Korosec, he can be heard saying in the background, "Lacroix is on his way up to do these guys."

Stan Korosec gave an unconvincing explanation at the hearings that he was simply saying Staff Sergeant Lacroix would be leading the CMU, and that he was not referring to the Aboriginal occupiers as "these guys." In my view, Stan Korosec's explanation is not credible.

Sergeant Korosec used aggressive language to inform Acting Staff Sergeant Skinner that Wade Lacroix had been contacted to lead the CMU and that a confrontation between the OPP and the Aboriginal occupiers was expected. In a telephone conversation with Constable Wayne Jacklin the previous day, Korosec had said, "[T]heir day will fucking come ... [W]e want to amass a fucking army ... a real fucking army and do this — do these fuckers big time." In my view, the statement "Lacroix is on his way up to do these guys" clearly referred to the Aboriginal occupiers and not to officers in the CMU. The language in these conversations was combative and bellicose, and contrary to the objective of Project Maple, which was to resolve the Ipperwash occupation peacefully. Words spoken by Stan Korosec in these transmissions escalated the tension and were not a measured response to the situation.

At 8:36 p.m., Sergeant Korosec successfully reached Constable Zupancic to give TRU the following instructions: "You guys are not to head down here ...

you're going to be told to turn around. Stay kitted up at the Pinery." The TRU team had reached Northville and Acting Staff Sergeant Skinner and Acting Sergeant Deane were approaching Forest. Again erroneous and unverified information was transmitted from Sergeant Korosec to Constable Zupancic: "[W]e got a big gathering down at the end of Army Camp Road and East Ipperwash. Baseball bats. They trashed a private vehicle that went by with the bats ... They're armed with baseball bats and whatnot at this intersection." Information on the Stewart George – Gerald George incident was inaccurately described to the TRU officer — it was not a confrontation with a civilian, and one Aboriginal man had thrown a rock at a Band Councillor's car. The vehicle had not been damaged by a group of occupiers "armed with baseball bats." The context and details of the incident were repeatedly exaggerated and miscommunicated by the OPP.

Sergeant Korosec also told Constable Zupancic that "people opposed" to the occupiers were "coming down from Kettle Point." He said, "[T]he dayshift are kitting up in their crowd management gear. And Wade Lacroix is coming up as well to handle them." Again, Sergeant Korosec's language with Constable Zupancic was inappropriate, aggressive, and pugnacious, not in keeping with the OPP's objective of resolving the occupation through negotiation and by peaceful means.

### **13.10 Mark Wright Tells MAG Lawyer: "They're coming out for a fight down to the road so we're [taking] all the marines down now."**

At the beginning of a call with government lawyer Tim McCabe, A/D/S/Sgt. Mark Wright says: "It's Detective Sergeant Mark Wright ... at the Land of Oz ... The shit's coming down right now ... we got major trouble right now." When Mr. McCabe asks what the problem is, Mark Wright replies, "Well, *they're moving ... they're coming out for a fight down to the road so we're [taking] all the marines down now.*" "Marines" connoted a large number of officers.

Mark Wright acknowledged at the hearings that this statement was "incorrect." At the time of this call, 8:25 p.m., no decision had been made to deploy the CMU. He said the following in his testimony at Forest:

I regret using those particular words to describe the situation. And, in hindsight, had I an opportunity to do that over again, I certainly wouldn't have used those words ...

I appreciate that it was inappropriate and a poor use of some words on my part.



The statement was not only factually wrong, it was pugnacious. Mark Wright was the Incident Commander's second in command. Yet the language he used to speak to the government lawyer, to people outside the OPP, and to OPP officers involved in Ipperwash, was aggressive and did not further the Project Maple objective of resolving the Aboriginal occupation without violence and by peaceful means.

The purpose of Mr. McCabe's call was to speak with Mark Wright about his evidence on the injunction application scheduled for the following morning in Sarnia. A/D/S/Sgt. Wright described to the MAG lawyer the events of the park occupation from September 4. He told Tim McCabe the OPP had "had a report of automatic weapon fire in the park." This information was also incorrect. It was an unverified report of gunfire from the vicinity of the army camp, not the park, and the OPP were uncertain whether in fact it had been an automatic weapon. But unlike Inspector Carson, who had spoken to Mr. McCabe earlier, Mark Wright did not qualify the report of alleged automatic weapon fire.

A/D/S/Sgt. Wright then proceeded to describe the Gerald George incident:

Well, fuck. Right now they've got about eight guys down at the bottom end of the park where the roads turn. I know you don't know the area, but I'll draw it for you so you'll see it ... *They've got about eight guys on the edge of the road with bats in their hand ...* And that's public ... county road access, so that's mischief. You can't use that road. And *they've trashed a car that went by*, so we've got wilful damage. We've got possession of weapon dangerous. And *we got four ERT teams and a TRU team and two canine units going down there to do battle right now.* (emphasis added)

Again Mark Wright conveyed erroneous information when he said there were eight men with bats in their hands. He thought the car had been damaged by "stones" and agreed at the hearings that "trashing a car" is much more serious than throwing one rock at a car. His description of events was incorrect, and he exaggerated the severity of what had taken place that evening. This was further compounded by his statement: "We got four ERT teams and a TRU team and two canine units going down there to do battle right now." Mark Wright acknowledged at the hearings that this statement was also inaccurate; no such OPP operation was underway at that time. A decision had not yet been made to deploy the Crowd Management Unit.

Mark Wright also recognized his military analogy "to do battle" was

*[a] poor choice of words, again, on my part. And [by] right now, I didn't mean right now as in this second. I meant in the totality of what*

was going on there. But again, I don't take issue with the fact that this may have been misinterpreted because of the poor way in which I explain this to Mr. McCabe. (emphasis added)

A/D/S/Sgt. Wright then tells lawyer Tim McCabe: "And we also have a number of irate citizens who are down there, I think, picketing, and people from Kettle Point themselves telling them to get out of there."

The assembly of frustrated cottagers at the MNR parking lot had taken place earlier that evening. Yet Mark Wright led Mr. McCabe to believe the angry residents were demonstrating at the time of their telephone call. Wright agreed at the hearings that although he was "trying to give him a broad view of what's going on," he was "admittedly not doing a very good job." Mark Wright added, "I can appreciate that both Mr. McCabe and anybody else who would have heard this might have taken that in its literal sense. And that's my fault."

Mr. McCabe wanted to ensure the notice of motion was served on the occupiers and he was concerned "it was getting dark." The MAG lawyer mentioned he had previously spoken to Inspector Linton, who had agreed to try and serve documents on the First Nations people. But Mark Wright, again using military language, replied: "No, no. I know what he said. No way, not now ... *We're going to war now. We're not going to be serving anybody.*"

A/D/S/Sgt. Wright testified that he believed the OPP "were going to go down to the sandy parking lot area and that there was a potential for a confrontation." He thought that if First Nations people were arrested, it would be difficult and dangerous to serve the occupiers with the injunction notice.

In this call, Mark Wright conveyed inaccurate information to Tim McCabe, which had the effect of exaggerating the seriousness of the situation at Ipperwash Park to the government lawyer preparing the injunction application to be heard the following morning in Sarnia. The OPP officer also relayed unverified information such as the report of automatic gunfire.

It was Mr. McCabe's "impression" from this conversation that "a serious circumstance ... was arising." Mark Wright had described "an emergency situation." As Mr. McCabe understood it from his office in downtown Toronto, the OPP was now "faced with a very difficult and very threatening circumstance."

While Mark Wright was on the telephone with Tim McCabe, Inspector Carson arrived at the Forest Command Post.

### **13.11 John Carson Returns to the Command Post: A Decision is Made to Mobilize the CMU**

Within a few minutes of ending his telephone call with Inspector Linton, John Carson decided to return to the command post. When he arrived shortly before



8:30 p.m., Inspector Carson tried to convince Inspector Linton that ERT officers, not the TRU team, should be used to arrest the occupiers who refused to leave the sandy parking lot and return to the park.

At that time, Sergeant Korosec was trying to contact Acting Staff Sergeant Kent Skinner. In the background, the voices of Inspectors Carson and Linton can be heard discussing various options to deal with the First Nations people in the parking lot.

Inspectors Carson and Linton discussed the damaged vehicle, the people on the roadway, the bus and truck, and the activity in the kiosk. Inspector Linton was concerned about sniper fire from the kiosk. The evacuation of the cottages was discussed because of potential risk to those residents.

At about 8:30 p.m. on September 6, the decision was made to mobilize the Crowd Management Team (CMU) to “clear the parking lot,” and to use the “tactical team, TRU team” to provide “the visuals and provide cover for the crowd management team.” The scribe notes, surprisingly, do not contain a record of the time this decision to mobilize the CMU was made, which John Carson could not explain.

The record-keeping and notes of the OPP were generally not of a high standard in the Ipperwash operation. Important information such as the time of the decision by the Incident Commander to mobilize the CMU is noticeably absent from the scribe notes. Also there are inconsistencies between the typed scribe notes and the handwritten scribe notes. Moreover, OPP officers often did not record information in their notebooks at the time of the event or before their shift ended.

It is fundamental that accurate detailed notes be recorded by the OPP at the time of the events. The OPP should continue to implement measures designed to ensure an accurate transcription of events. OPP Commissioner Boniface testified that scribe note-taking has improved since September 1995. For example, there is scribe training, and the Incident Commander must initial each page of the scribe notes to verify its accuracy. Police officers must also complete their notes before their shift ends, unless they receive permission to do otherwise. This not only promotes accuracy, it also minimizes contamination of the information. I commend these and other changes instituted by the OPP that further these objectives.

At 8:36 p.m., Inspector Carson contacted Acting Sergeant Ken Deane and told him to “hold the team down.” But it was too late — TRU Leader Kent Skinner and Ken Deane were pulling into the OPP Forest Detachment. The rest of the TRU team were in Northville at the time, less than twenty kilometres from the detachment. The TRU team had three cube vans, gun trucks, with “Police” inscribed on the side of the vehicles. John Carson instructed Acting Sergeant Deane to “take the gun trucks back” to Pinery Park, to send Kent Skinner to the

command post, and to “get an Oscar Team ready.” “Oscar team” was a term for the ERT observation team. “Sierra team” was the TRU observation team.

When Acting Staff Sergeant Skinner arrived, Inspector Carson discussed the need to evacuate the cottages in the vicinity of the sandy parking lot because of the possibility of a sniper in the kiosk. He wanted a Sierra team sent to the Tactical Operations Centre (TOC) with night vision equipment to observe the park gatehouse area and the sandy parking lot. Inspector Carson wanted to know about “the sight lines from the gatehouse to the sandy parking lot,” particularly whether the “parking lot was in line of fire.”

Inspector Carson instructed that additional uniformed officers be dispatched to the checkpoints, as ERT officers would be needed for the crowd management operation. Two ERT teams and a Staff Sergeant would be used that night for the crowd management formation.

Sergeant Korosec soon contacted the OPP London Communication Centre to find out how many officers were available in nearby areas, such as Strathroy and St. Thomas, in the event that additional police were required in the Camp Ipperwash area.

The checkpoint at the corner of Ipperwash Road and East Parkway Drive was moved up East Parkway Drive to the area near the TOC site in the MNR parking lot.

At 8:41 p.m., Sergeant Stan Korosec announced the CMU was “dressed and ready in rear of office.”

Inspector Carson made it clear he wanted the cottages near the parking lot evacuated. He was particularly concerned about the residents’ vulnerability to possible gunfire from the individual in the kiosk. Inspector Carson directed Acting Staff Sergeant Skinner to prepare to send a sniper team to check the “line of sight” from the kiosk to the parking lot. John Carson made it clear to the TRU Leader that it was simply “observation”: “[W]e are not going tactical, let’s get that straight.”

Inspector Carson wanted to ensure Kent Skinner understood TRU’s role that evening was observation and to support the CMU. This was not a TRU team tactical operation, such as when TRU officers secure the inner perimeter where a person threatens violence or suicide. The CMU would deal with the people in the parking lot, and TRU would be positioned on either side of the roadway to observe and protect CMU members if their safety was compromised.

Inspector Carson stressed, “[W]e are using TRU to go in and get an eye.” He issued the following caution — if the First Nations people “are just having a campfire ... leave them. Why go in the dark?”

At approximately 9:00 p.m., there was communication from the command post (Lima 1) instructing the closure of the roads. Sergeant Robert Graham, says:



“We want Checkpoint Charlie moved a little further back towards Checkpoint Delta ... At Checkpoint Alpha, we want the roads closed off. We want the roads closed off completely. No more traffic.” The crowd management team would move down the road to the sandy parking lot and it was important no vehicular traffic impede their movement.

A few minutes after 9:00 p.m. on September 6, the roads leading to Ipperwash Park were closed.

### **13.12 TRU Told Imitation AK-47s, Mini Ruger 14s, and Other Weapons Possibly at the Park**

At 9:09 p.m., Acting Staff Sergeant Skinner informed Constable Zupancic of the following possible weapons at the park: four imitation AK-47s, Mini Ruger 14s, scoped hunting rifles, and Molotov cocktails. Kent Skinner had received this information from Inspector Linton. Kent Skinner was having difficulty reaching Acting Sergeant Deane because of cell phone communication problems in the area. He expected Constable Zupancic to pass this information on to Ken Deane and the other TRU team members.

Constable Zupancic considered an imitation AK-47 a “knock-off,” but it was “just as dangerous” and “just as lethal” as an AK-47. No qualifications were placed on the information about the weapons, nor was the level of reliability of this intelligence conveyed to Constable Zupancic. Rick Zupancic in turn relayed this information about the weapons to members of the TRU team.

In Acting Staff Sergeant Skinner’s view, the probable existence of these weapons, the damage to the civilian car, and the reports of automatic gunfire increased the risk “substantially.” It also raised the likelihood that TRU would be deployed that night. Kent Skinner did not know there were inaccuracies in the information relayed and that it had not been authenticated.

This was a critical failure on the part of the OPP. There was a failure in OPP intelligence — the information coming to the command post was not analyzed, assessed, or designated on the scale of reliability. The OPP’s Tactics and Rescue Unit was sent to the sandy parking lot outside the park with mistaken and unverified information. The OPP’s assessment of the risk at the park was incorrect. This mistake had severe and tragic repercussions.

As I discuss in the following section, the leader of the CMU, Staff Sergeant Lacroix, was operating under very different information when his officers marched down East Parkway Drive that night toward the sandy parking lot. The TRU Leader and officers on the TRU team believed it was a probable risk that the occupiers in Ipperwash Park had firearms. Failed intelligence and miscommunication led to tragic consequences.

### 13.13 CMU Assembles at the Command Post

Sergeant George Hebblethwaite arrived at the OPP Forest Detachment shortly after 7:30 p.m. He had been on the ERT day shift, and was at the TOC site with A/D/S/Sgt. Wright when community residents had assembled to demonstrate their frustration with the First Nations occupation. After he arrived at the OPP Detachment, he and the other ERT officers were briefed by Sergeant Korosec. There was a discussion of the new equipment that had been requested and that would be distributed. This equipment included the ASP batons, Capsicum foggers or pepper spray,<sup>3</sup> and Nomex fire-retardant suits.

ERT officers were instructed that evening to return to duty, to equip themselves in hard Tac (protective gear), and to be prepared for a deployment of the Crowd Management Unit. Sergeant Hebblethwaite drove to Grand Bend to retrieve his CMU equipment. When he returned to Forest at approximately 8:40 p.m., members of ERT (Teams 3 and 6) were dressing in their hard Tac uniforms at the OPP Detachment.

Sergeant Hebblethwaite was designated second in command to Staff Sergeant Lacroix. Prior to Staff Sergeant Lacroix's arrival, Sergeant Hebblethwaite reviewed the CMU commands and formations with members of the unit. Sergeant Grant had given the ERT officers a demonstration on the use of the ASP batons.

After Sergeant Korosec contacted him, Staff Sergeant Lacroix took some time to retrieve his equipment and police cruiser from the Petrolia Detachment. When he arrived at the OPP Command Post at approximately 9:20 p.m., he noticed "a hub of activity"; officers removing equipment from their trunks and preparing for the CMU mobilization.

Sergeant Korosec approached Wade Lacroix to brief him. ERT (Teams 3 and 6) were "forming up" for the CMU behind the OPP Detachment and there were two canine teams in support. Staff Sergeant Lacroix learned that George Hebblethwaite, who was from Mount Forest (north of Guelph), had been designated as his second in command. Sergeant Hebblethwaite introduced himself and said he was behind the detachment, ensuring the officers were properly equipped. "This urgency was a surprise" to Wade Lacroix.

Staff Sergeant Lacroix entered the command trailer for a briefing by the Incident Commander. Another "surprise" was that Inspector Carson had returned to the command post; "John was in charge," and would brief him. Inspector Dale Linton was also present.

Staff Sergeant Lacroix was told a "civilian motorist had had his car pelted with stones and hit by baseball bats as it attempted to pass [the park]." Again this

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3 Capsicum foggers emit pepper spray over a broad area. It is capable of affecting several individuals.



unverified and unreliable information was relayed to the officer who would lead the CMU that night down East Parkway Drive to Ipperwash Park. It was Staff Sergeant Lacroix's understanding that this was a trigger event to call out the CMU.

Staff Sergeant Lacroix was instructed to command the CMU and to move the demonstrators back into Ipperwash Park. He was advised to "hold a position at the park boundary until relieved by uniformed personnel and [until a] check-point could be set up." Staff Sergeant Lacroix was also instructed to "arrest any demonstrators" who refused to leave the sandy parking lot for unlawful assembly and mischief.

At no time was there any discussion in this briefing with Inspector Carson about using a bullhorn or megaphone to inform the occupiers that they should return to the park. Another missed opportunity to convey this critical message to the First Nations people and to inform them that the OPP had no intentions of entering the park. The lack of communication by the OPP in this operation was a very serious failing.

A/D/S/Sgt. Wright, who had been on the telephone at the command trailer, joined the discussion about possible criminal charges and purpose of the arrests.

In my view, it is not convincing for the OPP to say it made some attempts to speak to a "leader" but that no "spokesperson" was identified by the Aboriginal people. Nor is it a convincing argument that the occupiers did not seem interested in participating in a dialogue with the police. The OPP should have communicated to the occupiers that they should remain in the park and that the police would not enter Ipperwash Park. As I discuss in the following chapter, the Aboriginal occupiers firmly believed the OPP's intention that night was to march into the park and arrest any protester who refused to leave the park site.

Staff Sergeant Lacroix understood his mission was to move the First Nations people into the park to ensure the safety of local residents and motorists using Army Camp Road. As Staff Sergeant Lacroix explained at the hearings, the four "p's" are to protect the public, protect property, protect the peace, and protect the accused. He clearly understood from Inspector Carson's briefing that the officers were to allow the First Nations people to return to the park and "under no circumstances" was the CMU to "go into the park." Unfortunately, however, this important message was not conveyed to the Aboriginal occupiers who believed the OPP intended to enter Ipperwash Park that night and arrest them.

Staff Sergeant Lacroix asked Inspector Carson for bolt cutters, the purpose of which was to deal with "passive resistors" in the crowd — those who attach themselves to immovable objects such as a fence. Inspector Carson thought Lacroix wanted to cut the park fence and told him the bolt cutters were not necessary, because the CMU would not be entering the park.

Staff Sergeant Lacroix also requested fire extinguishers. He explained at the hearings that “in crowd management, there’s two big fears” — fire and sniper. Wade Lacroix knew the occupiers had thrown a flare on September 4, and the possibility of fire that night concerned him. The CMU did not have two pieces of equipment that he considered important, fire extinguishers and Nomex fireproof coveralls. Staff Sergeant Lacroix “knew they were back ordered,” and “knew we did not have them.”

Staff Sergeant Lacroix was told the CMU would be on the command control communications on the TAC (total access channel). The TRU team had its own communication channel.

Staff Sergeant Lacroix asked if there was any intelligence. He was told male occupiers had piled up sticks and rocks in the sandy parking lot, there was a bonfire, but no sightings of weapons.

Wade Lacroix understood the mission. As Inspector Carson accompanied Staff Sergeant Lacroix to the door of the command trailer, the CMU leader assured him that he understood and was satisfied with the information conveyed in this briefing.

Sergeant Hebblethwaite had the officers lined up at the at the back of the trailer. Staff Sergeant Lacroix received confirmation that the appropriate number of officers were present, and that each member of the CMU had their protective gear, such as shields and helmets. Staff Sergeant Lacroix explained the mission to the officers.

Sergeant Hebblethwaite and the other officers in the CMU were told their mission was to secure the “public road allowance area” adjacent to Ipperwash Park. Occupiers who resisted and refused to leave the area could be arrested for mischief, unlawful assembly, or assault of a police officer if the circumstances warranted. The officers were explicitly instructed not to enter Ipperwash Park.

There were thirty-two officers in the CMU that night, including Staff Sergeant Lacroix and Sergeant Hebblethwaite. An additional eight officers were assigned as an arrest team. There were also two canine teams and two prisoner vans.

Staff Sergeant Lacroix did not take any preparatory steps before the night of September 6, as he had not known there was the possibility the CMU would be deployed. In fact, in a telephone call on the morning of September 5, Inspector Carson had told Lacroix: “[W]e don’t intend” to have a crowd control operation at Ipperwash. Therefore, in Staff Sergeant Lacroix’s mind, there had been no reason to do a site walk of the sandy parking lot, East Parkway Drive, or Army Camp Road to examine the terrain, the size of the parking lot, or to determine which CMU formations would be appropriate; “we only usually do a [reconnaissance] if you actually think you’re going to do a mission.” Had he known the CMU might be deployed, Staff Sergeant Lacroix “would have liked” to “pace it



off and walk the terrain.” He also would have liked to have had video surveillance of this area in advance of the CMU mobilization and deployment. Unfortunately this was not done. Lack of visual intelligence in the OPP operation at Ipperwash was a serious problem.

Staff Sergeant Lacroix had no information that night that the CMU would be used as a diversion to enable TRU to get into position so the Sierra team could gather intelligence as to whether the occupiers had firearms. That was not a proper use of the CMU, in Staff Sergeant Lacroix’s opinion. The CMU leader said, “[O]ur body armour would not stop an AK-47 round.”

Nor did Staff Sergeant Lacroix have information that night that there were concerns the occupiers had firearms. At his briefing in Forest with the Incident Commander before leaving for TOC, there was no discussion that the occupiers possibly had guns.

Staff Sergeant Lacroix was not aware that at approximately the time he arrived at the command post, Acting Staff Sergeant Skinner and Constable Zupan-cic were having a conversation about the types of firearms believed to be in the possession of the occupiers — Mini Ruger 14s, scoped hunting rifles, four imitation AKs, and Molotov cocktails. If TRU Team Leader Kent Skinner thought there was a fairly strong probability the occupiers had these firearms, Staff Sergeant Lacroix would have taken measures to ensure the CMU were not deployed to the park: “[W]e’re not equipped for those weapons.” The CMU are “not equipped, nor trained, to go in and make arrests under sniper fire.” He also testified the “CMU never trained with TRU” and “it’s not a normal mission for TRU to be there.”

Staff Sergeant Lacroix testified that if the head of the TRU team had this information about weaponry, it should have been communicated to him. In his view, there was miscommunication. If Kent Skinner believed the park occupiers had assault rifles such as AK-47s, the CMU should have been “stood down.” The CMU was not designed to march down the road in darkness to the sandy parking lot if members of the TRU team believed there was a fairly reasonable probability of weapons at the fence of the park.

Constable Jacklin was one of the CMU team members that night. He was at a checkpoint when the ERT officers involved in the CMU were first briefed in Forest. Before the CMU were deployed that night, he believed there was “a likelihood or a very viable threat that there could be weapons involved ... in the form of firearms.”

Clearly Staff Sergeant Lacroix had very different information from Constable Jacklin and the head of the TRU team on a very critical issue. Sergeant Hebblethwaite was also unaware that TRU Leader Kent Skinner thought there was a fair

probability the occupiers had firearms at the park fence line, such as AK-47s and Rugers. Nor did he know that Constable Jacklin, leader of the CMU arrest team, thought firearms at the fence was a “viable threat.” It was important, George Hebblethwaite testified, for both Staff Sergeant Lacroix and himself to have had this information before the decision was made to deploy the CMU.

In my view, it is a tragedy of errors that in the OPP mission that night, the CMU commanders and the TRU Leader were operating on different information. Even within the CMU, some officers believed there was a “likelihood” the occupiers would use firearms that night. Once again, poor intelligence and poor communication in the OPP operation.

September 6, 1995, was the first time the CMU and TRU had been deployed together.

At 9:22 p.m., it was decided that Inspector Carson and Acting Staff Sergeant Skinner would go to the TOC site at the MNR parking lot, and Inspector Linton would remain at the command post. Incident Commander Carson was responsible for the TRU team and crowd management team operation. Dale Linton was to monitor the outer perimeter in Forest.

CMU officers drove to the TOC at the MNR parking lot in police vehicles after the briefing at the Forest Detachment.

Sergeant Korosec remained in the radio area of the command post for the remainder of the evening. Sergeant Graham was also in the Forest Command Post.

It was John Carson’s hope and expectation that when the CMU marched down the road to the sandy parking lot, the occupiers would move back into the park. As Inspector Carson explained, “that’s certainly the psychological impact you are trying to impose by using a crowd management team.” Unfortunately, the First Nations occupiers did not understand the OPP’s intentions. They believed the OPP was preparing for a confrontation and would enter the park and arrest them. And they themselves were preparing that night for the heavily armed police officers in grey uniforms. They collected rocks, sticks, and stones, they carried baseball bats, they put gas in the school bus and drove it and other vehicles to the park, they assigned occupiers to particular areas as “look-outs,” and the First Nations people listened on the scanner for the approach of the police to Ipperwash Park.

Had the OPP appointed a negotiator such as Bruce Elijah, Bob Antone, or Cyndy Elder, had the OPP earlier in the day stood outside of the park fence and yelled the message, had the police used a megaphone, had the OPP inserted written pamphlets into the park fence that made it clear the occupiers must remain in the park and that the police had no intentions of entering the park, the



confrontation might not have occurred on the night of September 6. These simple, uncomplicated measures would have likely averted a tragic situation.

### **13.14 Inspector Linton Notifies MAG Lawyer of Trouble at Ipperwash Park**

At 9:19 p.m., Inspector Linton called MAG lawyer Tim McCabe in Toronto and told him, “[W]e’ve got all kinds of trouble up here.” Women and children leaving the area had told police officers, “There’s gonna be big trouble,” a vehicle had been damaged with “bats,” a bus and dump truck had been moved to the park, and “they’re manning a kiosk.” Inspector Linton said, “We don’t know whether there’s gonna be an ambush.” The occupiers were “provoking people on the highway”; they stopped a “lady” driving on the road and damaged her car. They were “massing people” inside the park. He told Mr. McCabe it was unlikely the occupiers could be served with notice of the injunction application: “[t]he potential for danger is really high” and “it would be very difficult for us to go in there now.”

Once again, there were so many inaccuracies in the information conveyed and in Inspector Linton’s perception of the so-called escalating events at Ipperwash. Mr. McCabe asked the OPP Inspector to try to serve the court documents or to verbally inform the First Nations people of the application, and to encourage them to appear at the injunction proceeding if “things calm down over the course of the night” or “early in the morning.”

### **13.15 Inspector Linton Tells Superintendent Parkin: Tonight’s the Night**

At 9:48 p.m., Inspector Linton called Superintendent Parkin at his home to give him an update on events. At that time, the CMU were being briefed on their “mission” at TOC. Superintendent Parkin learned that a group of “irate” citizens, as well as the Mayor of Bosanquet (Fred Thomas), met near TOC to express their “displeasure” that “nobody was doing anything.”

Superintendent Parkin was told that as a *woman* drove from the citizens’ meeting past the gates of Ipperwash Park, she had been confronted by eight Native males, *four of whom had baseball bats* — “they started banging on her car,” damaging her vehicle.

Inspector Linton reported that occupiers were moving their bus and dump truck to the area near Army Camp Road and East Parkway Drive. First Nations people were in the park “kiosk pulling down the blinds ... like they were setting us up, like come on down here.” Aboriginal women, who were evacuating the

area with their children, warned there would be “trouble tonight.” There were bonfires near the entrance to Ipperwash Park and at the army camp gate; First Nations people congregated in both these areas.

Inspector Linton told Superintendent Parkin that TRU was at TOC and two Sierra teams were observing the area. He said the OPP “had a whole list of automatic weapons that somebody gave us this evening ... that’s supposed to be down there.” Inspector Linton expressed concern about the possibility of sniper fire. It continued to be Superintendent Parkin’s view that automatic weapons in the possession of the park occupiers was unconfirmed information.

Inspector Linton explained he was stationed at the command post in Forest, and Inspector Carson was at TOC.

Superintendent Parkin asked what the officers in Grand Bend could see in the videos. He was told the videos were blurry and movements of the occupiers could not be seen. But the First Nations people, Inspector Linton said, “are outside the fence ... lighting fires,” and have “clubs and stuff.” Inspector Linton said: “So it looks like tonight’s the night. They’re revved up for action. Their women and kids are leaving. It really surprised [me] that they’d be this aggressive.”

Superintendent Parkin wanted to know if the OPP plan was to remain outside Ipperwash Park. He was assured this was their intention, provided the occupiers remained in the park.

The injunction application scheduled for the following morning was also discussed. Inspector Linton explained that Mr. McCabe had faxed the injunction documents to the Forest Detachment, but he had informed the government lawyer it was unlikely these documents could be served on the Aboriginal people, given the escalation of events at the park. Superintendent Parkin replied, “They’re probably all boozed up, they’ve probably been drinking.” Tony Parkin acknowledged at the hearings that he had no information that OPP officers had seen alcohol bottles or smelled alcohol on the breath of First Nations occupiers on September 6. He denied he made this statement because of the stereotype that First Nations people are heavy alcohol users. Clearly this language was inappropriate, offensive, and culturally insensitive. One would expect an OPP officer of this high rank not to resort to such statements. Tony Parkin, the OPP Superintendent, should have been setting the example to OPP officers. It is evident that Native awareness training and sensitivity to Native issues were lacking at all levels of the OPP organization.

The type of injunction sought by the government — the *ex parte*, emergency injunction — was discussed. It surprised Tony Parkin. Park Superintendent Les Kobayashi had reported the possibility of automatic weapons “up through the MNR side” to his superiors at the Ministry of Natural Resources. This



information had travelled to the Deputy Solicitor General's office, Superintendent Parkin said, and now there was "concern" that "maybe we weren't doing the right thing." The OPP Superintendent seemed worried about the perceptions of politicians and bureaucrats in the provincial government at Queen's Park.

The OPP Superintendent was concerned that the information about automatic weapons, which travelled from Les Kobayashi at the command post to Ministers and senior bureaucrats at Queen's Park, had been an important factor in the government's decision to seek an *ex parte* emergency injunction. In his view, a regular injunction was appropriate in the circumstances — there was no urgency, and moreover, this type of injunction was more consistent with de-escalating the situation at the park.

Inspector Linton informed Superintendent Parkin that MPP Beaubien had visited the command post that evening. The MPP had "talked to" the Solicitor General and the Attorney General, and "they were comfortable." In fact, as discussed earlier, the MPP did not have these discussions with Solicitor General Runciman and Attorney General Harnick. Superintendent Parkin agreed that the provincial government seemed satisfied with the manner in which the OPP were handling the Ipperwash situation. He said the OPP Commissioner had spoken to Solicitor General Runciman and

... they were more than pleased with what the OPP was doing, so there's no problem there. What happened though ... by that information about the automatic weapons going up the MNR side, they went from that regular type of injunction to the emergency type which ... isn't really in our favour.

When Superintendent Parkin testified at the Inquiry, he said that the views of the politicians at Queen's Park were not relevant to the decisions being made by the OPP on the night of September 6. Yet it is evident that he was concerned about the views of politicians in the Ontario government regarding the OPP operation at Ipperwash.

Inspector Linton told Superintendent Parkin that ten TRU officers and sixty ERT officers had been assigned to the Ipperwash Park area, and Staff Sergeant Wade Lacroix would lead the ERT officers in the CMU. Superintendent Parkin cautioned Inspector Linton: "Wade's a good guy ... just make sure that you or John control it." Dale Linton assured the OPP Superintendent that Inspector John Carson was stationed at TOC and he did not "think ... the thing's gonna get away" on them. Superintendent Parkin wanted to ensure that Inspectors Carson and Linton were the ultimate decision-makers. At the end of the conversation,

Superintendent Parkin urged Inspector Linton to call him “if things start to really take a tumble.”

It was not until after Dudley George’s death that Superintendent Parkin learned that it was Kettle and Stony Point Band Councillor Gerald George, not a female resident, whose vehicle had been damaged by an occupier earlier that evening. And it had been damaged by a single rock thrown by one person, not hit with baseball bats by several occupiers. He learned that the damage to the car was not significant. He also later learned that Gerald “Booper” George had an adversarial relationship with the occupiers and had criticized the army camp occupiers in a letter to the editor of the local newspaper in August 1995 before the occupation of the park.

Clearly senior members of the OPP were operating on unverified misinformation. Questions Superintendent Parkin expected OPP officers to ask on the Gerald George incident were: Was there a motive on the part of Gerald George to mislead the police? Did he have an ulterior purpose in providing this information to the police? He also thought the statement taken from Gerald George at 8:26 p.m., that *one person* threw a *rock* at the car he was driving, should have been read by someone at the command post. He also expected steps to be taken by the OPP to follow up on the information that women and children were leaving the area. And the information Detective Constable Dew received from Gerald George on weapons — semi-automatic guns, Mini Ruger firearms, hunting rifles with scopes — also ought to have been followed up and authenticated by the OPP. As I have said, poor intelligence, missed opportunities, and miscommunication resulted in mistakes and tragic consequences.

When Inspector Linton and Superintendent Parkin ended this telephone call, the CMU was preparing at the TOC site for their march toward Ipperwash Park.

This was the last call Superintendent Parkin had with the command post before the fatal shooting of Dudley George.





SEPTEMBER 6, 1995 — THE UNINTENDED  
CONSEQUENCES OF PRECIPITOUS ACTION:  
CONFRONTATION BETWEEN THE OPP AND  
THE FIRST NATIONS OCCUPIERS

### 14.1 The CMU Commander and His Team Drive to TOC

Staff Sergeant Lacroix drove to the Tactical Operations Centre (TOC) at the MNR parking lot with Sergeant Hebblethwaite. The night of September 6 was the first time Wade Lacroix was senior commander of the Crowd Management Unit (CMU), it was the first time the newly constituted CMU had been deployed, and it was the first time the CMU's new tactics were used. It was also the first time Inspector Carson had used a Crowd Management Unit, and the first time the CMU and TRU (Tactics and Rescue Unit) were jointly deployed.

On the drive to TOC, Staff Sergeant Lacroix and Sergeant Hebblethwaite heard a number of OPP radio communications. There was a report of First Nations people gathered around a bonfire with bats, clubs, sticks, and other possible projectiles. Women and children were evacuating the area. Officers, including Sergeant Hebblethwaite, believed this was “in preparation” for a “confrontation by the occupiers.” They heard that police at the checkpoint at Army Camp Road and Highway 21 had seized clubs, bats, and sticks from the cars of First Nations people accessing the area, and that additional officers had been dispatched to this checkpoint.<sup>1</sup> “It was clear” to Sergeant Hebblethwaite that “in all probability,” the OPP was “going to end up in a confrontation that night.”

Continued failed communication between the OPP and the First Nations people. As discussed, the occupiers were in fact making “defensive” preparations that night for an anticipated confrontation initiated by the police.

Sergeant Hebblethwaite described the sandy parking lot to the CMU Commander as the two officers travelled to TOC. As mentioned, Staff Sergeant Lacroix did not engage in any preparatory examination of the terrain before September 6, and consequently was not very familiar with the dimensions of the sandy parking lot. The previous day, Inspector Carson had told Lacroix that the CMU would

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<sup>1</sup> This was Checkpoint Delta.



not be deployed to Ipperwash. Therefore, the CMU Commander was not conversant with the size of the parking lot that bordered the provincial park, which was important in determining the appropriate formations for the Crowd Management Unit. Generally, a reconnaissance is done before an OPP mission and Wade Lacroix testified that he “would have liked” to “pace it off and walk the terrain.” In fact, the CMU encountered difficulties with the CMU formations that night during the encounter with First Nations people. To compound matters, the OPP had not been successful in installing cameras in the sandy parking lot, and visual intelligence was poor. There was also poor lighting in this area after darkness fell. As Wayne Wawryk, an expert in intelligence, said at the hearings, vision “is paramount” in tactical operations “[b]ecause if you can’t see, how can you put anything into context?”

The CMU Commander was confronted by many surprises that night when he and over thirty of his officers marched in darkness to the park. A question repeatedly asked is what was the urgency for the CMU deployment, and why did the OPP march toward Ipperwash Park in darkness on the night of September 6?

## **14.2 The Decision to Send the CMU down East Parkway Drive**

A combination of factors led Inspector Carson to decide to deploy the CMU to the sandy parking lot outside Ipperwash Park. Unfortunately and tragically, much of the information on which he relied had not been analyzed or verified.

The decision to deploy his officers was based in large part on erroneous information. The OPP’s failure to communicate with the Aboriginal people from the inception of the occupation led the occupiers to believe the large number of police in the vicinity of the park were planning to enter the park, arrest them, and place them in custody. The OPP had a critical opportunity that night to make it clear to the occupiers that they had no such intention. But that did not happen. Poor communication, tragic consequences.

Before the CMU was deployed that night, Inspector Carson continued to mistakenly believe a car driven by a civilian had been damaged by bats, when in fact one occupier had thrown a rock at a car driven by Councillor Gerald George. It was a minor altercation between Aboriginal people. Poor intelligence.

The Aboriginal occupiers had moved the school bus to the park, and there was vehicular traffic between the army camp and the park. Inspector Carson knew the yellow school bus had been used in the occupation of the army camp about six weeks earlier on July 29, when it had been driven into the military Drill Hall. On September 6, the occupiers drove the bus to the park from the built-up area.

John Carson was worried that the school bus could be used for aggressive purposes toward the OPP. Another factor that concerned him were reports from the Oscar team and other ERT officers that the occupiers were outside the park in the sandy parking lot and on the roadway with bat-like objects. Carson did not understand that collecting bats and sticks, driving back and forth between the army camp and the park, and preparing the school bus were actions taken by the occupiers because the First Nations people truly believed the police were determined to end their protest, to physically remove them from the park, and to arrest them.

Inspector Carson was also concerned about the impact of the occupation on cottagers and other members of the community. A/D/S/Sgt. Mark Wright had met with residents at the MNR parking lot earlier that evening and persuaded them not to march to the park to demonstrate their anger and frustration. This was “certainly an issue” for Carson: “[I]f any of these cottages were broken into or damaged ... this issue was going to be most difficult to try and address.” He also testified: “Our credibility would have been absolutely lost” and “the cottagers would have taken it into their own hands quite frankly. I think their confidence level was on edge.”

There was increased activity in the area of the sandy parking lot. First Nations people with baseball bats and similar objects were reportedly near the cottage that bordered the sandy parking lot and also along the beachfront. The OPP mistakenly believed the occupiers had built a fire in the sandy parking lot, and that it threatened the safety of the nearby residents and cottages. This information had been transmitted to the command post by Constable Whelan, who was on the Oscar ERT observation team. The OPP relied on erroneous information in its decision to mobilize the officers that night. The two bonfires were in the park, at the beach and near the turnstile.

A critical factor in Inspector Carson’s decision to deploy the CMU was the inaccurate information that the occupiers had hit and damaged a car with baseball bats. Carson agreed that someone throwing a stone at a car is substantially different than a report that a private citizen’s car has been beaten with baseball bats. The poor intelligence in the police operation led the OPP to make mistakes that had serious and lasting repercussions. John Carson relied on this unauthenticated information in his decision to deploy the Crowd Management Unit to the park that night.

Although Inspector Carson believed there was a possibility the occupiers had firearms that evening, he thought the risk was small. But unfortunately, Acting Staff Sergeant Kent Skinner and his TRU team had a much higher and erroneous assessment of the risk of firearms in the possession of the occupiers at



the park. If John Carson had thought there was a serious danger the occupiers would fire guns on the CMU as it marched down the road to the sandy parking lot, he would not have deployed the CMU that night.

Inspector Carson decided to deploy the CMU and TRU to ensure the occupiers did not move outside the park to the municipally owned parking lot, to the road, or to the privately owned cottages. Again this crucial information was not conveyed to the First Nations people. A critical lost opportunity.

At 10:18 p.m., Inspector Carson contacted Inspector Linton at the command post to find out who lived in the cottage immediately west of the sandy parking lot. He wanted to ensure these residents stayed away from the side of the house bordering that area. About twenty minutes later, Mark Wright informed Inspector Carson that the house was vacant. In fact, this information was also inaccurate — Mrs. Fran Hannahson was in the cottage with her young grandson, who was sleeping.

It was Inspector Carson's understanding that his officers would contact cottagers in the vicinity of the park and advise them to remain in their homes. According to the scribe notes, Inspector Linton contacted the Jago residence. He also called the Hannahson cottage, but there was no answer. But this could not be case. Fran Hannahson did not have a telephone in her cottage.

Inspector Carson knew that deploying the CMU in darkness was not an optimal situation. He would have preferred the deployment to occur in daylight with a helicopter overhead and a video of the area, but he felt events were out of his control. He was off duty at a friend's home for dinner when some of the "escalating" incidents took place — the Stewart George/Gerald George incident, Mark Wright's encounter with the First Nations people at the intersection of East Parkway Drive and Army Camp Road, and Inspector Linton's decision to call out TRU. Inspector Carson said at the hearings, "It was chaos when I arrived back" at the command post. "There was a lot of information, a lot of discussion and a lot of things being shared back and forth." Issues came at him in a "barrage."

Many of the factors that propelled John Carson to deploy the CMU on the night of September 6 were based on unauthenticated and mistaken information. Of critical significance was the belief that a female civilian's car had been damaged with baseball bats. In fact, at 10:44 p.m., about twenty to twenty-five minutes before Dudley George was fatally shot, Detective Constable Dew informed Inspector Linton that one First Nations man, Stewart George, had thrown a rock at the car. But again this information was not communicated to Inspector Carson. Another critical opportunity was missed to allow Inspector Carson to reassess his decision to deploy the CMU and TRU. The consequences were tragic.

It was more than a year later before Inspector Carson learned that the car driven by Gerald George in the early evening of September 6 was damaged by a rock, not baseball bats. OPP press releases issued after Dudley George's death continued to perpetuate this unverified and inaccurate information, this time to members of the public. The continued dissemination of wrong information is discussed in Chapter 19.

### **14.3 The Incident Commander and TRU Leader Arrive at TOC**

Inspector Carson and Acting Staff Sergeant Skinner, the TRU Team Leader, travelled to the Tactical Operations Centre (TOC) in tandem in separate cars. When they arrived at TOC at approximately 9:40 p.m., the officers were dressed in their respective uniforms and were organizing their equipment.

After Constable Zupancic reached TOC at about 9:35 p.m., he set up the TRU recording equipment. It was Rick Zupancic's role that night to operate the recorder and to transmit communications from TRU to Inspector Carson, and from Inspector Carson to the TRU team. Acting Sergeant Ken Deane was generally responsible for this function, but they had switched duties because of Constable Zupancic's back problems.

Constable Zupancic had been to a chiropractor earlier that day for his back, but the pain had become more acute. As a result, he requested lighter duties. In that night's mission, he would be expected to wear his TRU gear and be prepared to jump, run, climb fences, and make arrests, which he did not think he was physically capable of. Earlier that day, he spoke to Ken Deane whose role was to monitor and transmit TRU communications in the TOC. This was a more sedentary position. It was decided that Constable Zupancic and Acting Sergeant Deane would switch roles.

Inspector Carson and TRU Leader Kent Skinner were stationed in the front seat in the TOC vehicle during the OPP operation. There were two radio sets in TOC — one for the CMU on the TAC channel, and one for the TRU team.

It was also Constable Zupancic's role that night to provide cover to TRU medic Ted Slomer if his assistance was required during the deployment. They were instructed to use the Suburban vehicle. Slomer understood his prime responsibility was to provide medical support within the inner perimeter, primarily to police officers, and secondarily to others in the area. He was to provide medical support within the danger zone in which the officers operated. He also understood that he would serve as a liaison between the police and the EMS or medical personnel.



At TOC, Ted Slomer spoke with three members of the ambulance crew. He assured them that they would not be called into a high-risk or dangerous area. He explained that if the scene was not secure, he would enter the inner perimeter, triage, and funnel patients to the MNR parking lot for further assessment and transport to hospital. Further discussions between TRU medic Slomer and the ambulance personnel are discussed in detail in Chapters 16 and 17.

Ted Slomer was assigned the Suburban vehicle to transport injured persons that night, and Constable Zupancic was the designated driver. The paramedic wore the TRU uniform with the words “medic” inscribed on the back and front. He wore a bulletproof vest and a radio headset, and carried a small flashlight. Slomer had borrowed medical equipment from Victoria Hospital Emergency for this OPP operation. He had bandages, dressings, basic splinting materials, and ice packs. He also had intubation equipment to secure a patient’s airway, an oxygen cylinder with masks, and intravenous solutions. Ted Slomer was a volunteer medic for the OPP on September 6, 1995.

#### **14.4 CMU Officers Congregate at TOC to Prepare for Their Deployment**

At 9:49 p.m., Constable Wayne Jacklin was told to report to TOC to supplement the CMU arrest team. When he arrived, he was instructed to assemble an arrest team of eight members, which included officers Root, Zacher, Poole, Bittner, Ternovan, Myers, and Aitchison. Constable Jacklin was the group leader.

Constable Jacklin was aware of the 9:39 p.m. transmission from TOC (Lima 2) to the Forest Command Post (Lima 1) that women and children were evacuating the army camp, that the occupiers had a dump truck and “Batmobile” (“OPP WHO” car), and that they had built a large bonfire. Constable Jacklin believed the situation was escalating.

All CMU members were dressed in hard Tac equipment — shin guards, thigh guards, forearm guards, a helmet, and a visor. The arrest team was positioned at the rear of the CMU. They wore the same uniform as the CMU members but did not carry shields.

Constable James Root was partnered with Constable Jacklin. September 6 was the first time Constable Root had been deployed as a member of the CMU.

Prior to the deployment of CMU from the TOC site, Constable James Root was aware of the report from officers that gunfire may have been discharged from the army base or park area.

The CMU officers were instructed to form into their respective squads at TOC. Constable Kevin York was assigned to the front contact squad. His partner

was Constable Sharp. This was also the first time Constable York had been deployed in the Crowd Management Unit.

Sergeant Rob Huntley was the leader of the CMU's right squad on the night of September 6. Constable Christopher Cossitt was also assigned to the right squad that night.

Constable Denis LeBlanc's role was to drive a prisoner van behind the Crowd Management Unit. He was instructed to follow with his headlights off behind the prisoner van driven by Constable Harry Marissen. Constable LeBlanc was responsible for transporting any persons arrested that night to the Tactical Operations Centre.

A number of officers who testified at the hearings described their anxiety regarding their mission and the deployment of the CMU to the sandy parking lot. The darkness caused additional risks and challenges in terms of visibility, which concerned CMU officers. Constable Cossitt described the TOC site as "very dark and ominous." As stated earlier, there was also very little lighting at the sandy parking lot and in the vicinity of the park. Most of the officers did not have night vision equipment. Sergeant Hebblethwaite, the CMU's second in command, "didn't like" the fact that they were marching in darkness. Constable Cossitt was also worried about the potential use of firearms by the occupiers because of the rumours he had heard earlier in the day and recalls "being very nervous."

What was the urgency of the CMU mobilization and deployment to Ipperwash Park in the darkness of the night?

## 14.5 TRU Officers Assemble at TOC

Before TRU officers left Pinery Park for a briefing at TOC, many believed the First Nations people likely had firearms at the park. For example, Constable Zupancic had told Constable Beauchesne that AK-47s, hunting rifles with scopes, and possibly Molotov cocktails were in the possession of the First Nations occupiers. When the TRU team received their briefing at TOC that night, the possible existence of these weapons was further confirmed.

Ten TRU members were involved in the police operation at Ipperwash on the night of September 6. The TRU Team Leader was Acting Staff Sergeant Skinner, and the assistant team leader was Acting Sergeant Deane. Constables Rick Zupancic, Bill Klym, Kieran O'Halloran, Dave Strickler, Mike McCormick, Glen Kamerman, James Irvine, and Mark Beauchesne were on the TRU team. Constable Beauchesne's partner that evening was Constable Klym. Acting Sergeant Deane's partner was Constable O'Halloran.



Kent Skinner had a discussion with Inspector Carson before he briefed his TRU team. The Acting Staff Sergeant understood TRU had two important roles. One role was for the Sierra teams to provide intelligence on activities at the park kiosk, the sandy parking lot, and at the intersection of East Parkway Drive and Army Camp Road. The two Sierra teams were to be invisible. TRU's second role was to provide cover for the Crowd Management Unit when it was deployed to the sandy parking lot.

Constable Zupancic, as mentioned, was responsible for recording TRU's transmissions and was assigned to TOC for the OPP operation. Rick Zupancic was to remain in the TOC with Acting Staff Sergeant Skinner and Incident Commander Carson. As I describe later in the report, TRU transmissions from and to the TRU officers in the OPP operation were not recorded as Constable Zupancic testified he did not press the appropriate buttons on the recording device.

Prior to TRU's deployment, Acting Staff Sergeant Skinner briefed his officers. There were two Sierra teams that night. These officers wore their tactical uniforms and also carried assault weapons. Constables Jim Irvine and Dave Strickler were on Sierra 1, and Constables Mike McCormick and Glen Kamerman were on Sierra 2. Each Sierra team had one piece of night vision equipment.

The TRU Alpha team consisted of four officers — Acting Sergeant Ken Deane, and Constables Kieran O'Halloran, Mark Beauchesne and Bill Klym. They also wore their tactical green uniforms, bulletproof vests, and carried a mixture of weapons, including assault rifles and semi-automatics pistols. Because the OPP had a shortage of night vision equipment, only one Alpha member (Mark Beauchesne) had night vision equipment. Ken Deane was the designated communicator for the Alpha team.<sup>2</sup>

TRU officers had an elevated and mistaken assessment of the risk that First Nations people had weapons in the park. Poor intelligence in the OPP operation with tragic repercussions.

When Acting Staff Sergeant Skinner briefed the TRU officers, he relayed the inaccurate and unverified information that he had received. He told the TRU team a civilian's car had been trashed by the occupiers with baseball bats, and there was the possibility the occupiers had a number of assault weapons. Ken Deane and the other TRU officers believed that the OPP were facing a situation that evening where First Nations people could be armed with AK-47s, hunting rifles, and Molotov cocktails. Several TRU members including Ken Deane had heard the report (which had not been verified) that fifty to one hundred rounds of gunfire had been discharged the previous night. They were also aware of the increased activity in the park in the late afternoon and evening.

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2 Ken Deane died shortly before he was scheduled to testify at the Inquiry.

First Nations people with baseball bats had not trashed a civilian’s car. This “broken telephone” message was relayed because of poor intelligence and miscommunication. Stewart George threw a rock at a car driven by Gerald George and no baseball bats were involved. It was simply an altercation between a Kettle Point Councillor and an occupier who was agitated because of a letter Gerald George wrote that was critical of the occupiers to the editor of a local newspaper. The OPP had no verification regarding the discharge of automatic gunfire on the previous night. TRU officers deployed outside Ipperwash Park were operating under wrong information. This continued perpetuation of wrong information and a mistaken perception of risk greatly contributed to the tragedy at Ipperwash on September 6 because it resulted in the deployment of the CMU and TRU.

Ken Deane, who organized the Alpha team, understood that if the Crowd Management Unit were subjected to or were threatened with gunfire, it was the TRU officers’ responsibility to “deal” with the gunfire or threat of gunfire.<sup>3</sup>

Sierra team 1 — Constable Irvine and his partner Constable Strickler — were instructed to find an observation point on the north side of East Parkway Drive. Constables McCormick and Kamerman on Sierra team 2 were instructed to position themselves on the south side of the road. Initially the Sierra teams were to observe and gather intelligence, but once the CMU was deployed, their role was to protect the CMU officers.

The Sierra teams had been instructed to gather intelligence on activity in the park kiosk and to cover the CMU as they moved down East Parkway Drive toward the park.

Inspector Carson described the TRU team as “the eyes” of the Incident Commander. The TRU team keeps the Incident Commander informed and apprised of events on an ongoing basis in the OPP mission.

At his trial, Acting Sergeant Ken Deane said he thought there was a realistic possibility there might be fire from AK-47s. An AK-47 is a semi-automatic machine gun. Ken Deane said, “[W]e took that intelligence [about firearms] very seriously.” But that information had not been verified by the OPP officers. Acting Sergeant Deane did not know whether the CMU had this information about the AK-47s on September 6. Ken Deane agreed that the Crowd Management Unit was completely ill equipped to deal with AK-47s.

Eight TRU members on three teams were on the ground that night — two Sierra teams and an Alpha team.

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3 Ken Deane, transcript of testimony before Fraser J., Ontario Court (Provincial Division), April 8, 1997, pp. 173–174.



## 14.6 The Sierra Teams Are Deployed

Sierra 1 and Sierra 2 were deployed from the TOC site in the MNR parking lot at approximately 9:37 p.m.

There was a radio transmission that two TRU teams were being dropped off near the park to observe the area. This alerted the ERT Oscar team, which had been deployed to the nearby cottages, that TRU officers were in the vicinity.

The two Sierra teams, as mentioned, were Constables Irvine and Strickler, and Constables McCormick and Kamerman. They were transported part way up East Parkway Drive in a Suburban driven by Ken Deane.

The Sierra teams immediately encountered difficulties. Aboriginal occupiers were searching “for individuals all along the sides of the roadway.” The Sierra teams had difficulty moving into position “to be the eyes.” TRU officers feared they would become visible to the occupiers. Acting Staff Sergeant Skinner acknowledged this was a “tactical error” — the Sierra teams should have been deployed on foot, not in the Suburban. At no time prior to the deployment were the Sierra teams able to successfully move into position to be “the eyes” on the sandy parking lot. Even when the CMU were initially deployed, Constable Irvine radioed the Tactical Operations Centre that Sierra was not in position and did not yet have an eye on the park. Consequently, the Incident Commander did not have the benefit of their intelligence or surveillance on the night of September 6.

As I mentioned in the previous chapter, neither CMU nor TRU officers such as Staff Sergeant Lacroix, Sergeant Hebblethwaite, Constable Beauchesne, or Constable York understood that the CMU would be used as a diversion to allow the Sierra officers to move into position. As Staff Sergeant Lacroix, the CMU Commander, repeatedly said, that would be inappropriate. Had he had such knowledge, he would have “stood down” the CMU. The CMU would not have marched that night toward the park.

According to Acting Staff Sergeant Skinner, the OPP plan needed to be modified because of TRU’s inability to get into position to observe the park kiosk and the sandy parking lot. It was decided that the CMU would move onto the roadway as a distraction to the occupiers to enable the Sierra teams to move into position. As discussed, this was certainly not the understanding of the CMU Commander or his second in command. This would be an inappropriate use of the Crowd Management Unit.

Dale Plain, one of the Aboriginal occupiers, saw the Suburban vehicle pull up and stop. After they were dropped off, Constable Irvine and his partner Constable Strickler engaged in “caterpillar” movements to move forward. Constable Irvine would move forward, observe the area with his night vision equipment, and call

his partner to his position if the area was safe. Constable Irvine saw a man with a “large walkie-talkie hand-held radio,” and something long in his hands — a stick, pole, or rifle. He soon left the area.

## 14.7 Cecil Bernard George Returns to the Park

It was dark when Cecil Bernard George (“Slippery”) returned to the park that evening. He brought his walkie-talkies and scanner with him. He saw a bonfire burning inside the park as he approached the area.

Cecil Bernard George told the First Nations people at the park that there was a “large amount of police buildup to the west of the park,” and he “just had a funny feeling that something might take place.” He cautioned the occupiers to “be careful.” None of the occupiers had guns.

Roderick George was in the park when Cecil Bernard George arrived. Cecil Bernard gave Roderick his scanner as they talked by the bonfire near the turnstile. Cecil Bernard said he was going down the road to see what was happening. A couple of First Nations people, including Isaac Doxtator, accompanied him. Two fires were burning in the park that evening.

The purpose of the scanner, according to Warren George, was “to monitor the OPP ... to know if they were going to attack us.” Stacey George heard the police reacting on the scanner as the fire grew bigger in the park. He thought the police on the boat on Lake Huron also likely saw the bonfire.

Cecil Bernard George had brought a scanner to the park to pick up police communications. As they listened to the police exchanges on the scanner, Marlin Simon learned of Gerald George’s complaint to the OPP, and that the police were increasing their presence in the area. He also learned about the positioning of some of the officers. He learned that a mobile command centre had been set up in the parking lot off East Parkway Drive.

Marlin Simon also heard on the scanner that night that the OPP were dispatching a TRU team, which he considered to be a SWAT team. This greatly concerned Mr. Simon who felt “something big was ... about to happen.” Marlin Simon noticed there were few First Nations people in the park at the time. He “jumped in the car and went for a ride up to the barracks” to “see if [he] could round up any more people.” He “tried to round up ... as much help as [they] could get.”

Cecil Bernard George did not stay at the park for very long. He wanted to find out the reason for the police buildup and decided to walk down East Parkway Drive. He carried a four-or five-foot stick and one of his walkie-talkies. Two other young Aboriginal men accompanied Cecil Bernard George.



As he walked down East Parkway Drive, Mr. George heard “faint voices” and “sticks cracking.” He radioed this information to the Aboriginal people in the park.

The two Aboriginal men who were accompanying him returned to the park. Mr. George became increasingly anxious as he continued to walk down East Parkway Drive.

Elwood George saw Cecil Bernard George go on a “recon” down East Parkway Drive in a westerly direction to observe the activities of the police. On the walkie-talkie, Elwood heard him say he saw many police officers. Elwood George also decided to go to the built-up area to recruit more Aboriginal people to the park. When he returned to the park, he saw twenty to thirty occupiers. Aboriginal people were walking around with clubs.

John Carson learned after September 6 that Aboriginal people at the park were listening to police communications on the scanner. This greatly heightened the anxieties of the Aboriginal people and was responsible for escalating the tension at Ipperwash Park. Information on the positioning of the OPP officers, intelligence on the occupiers, and tactical decisions of the police is information that the Aboriginal people should not have been able to pick up on their scanner. John Carson said that, in hindsight, it would have been better if the OPP had transmitted information in such a way that civilians could not overhear it.

In my view, the ability of the occupiers to listen to the OPP communications on the scanner significantly heightened the anxiety of the First Nations people. It could have also compromised the safety of the officers. I agree that the OPP should take measures to ensure that communications between officers regarding tactical decisions and intelligence remain within the OPP.

## **14.8 Briefing before CMU is Deployed**

According to Staff Sergeant Lacroix, Inspector Carson gave the CMU Commander his final briefing just before 10:25 p.m.

When he arrived at TOC, Staff Sergeant Lacroix requested an update on intelligence. He was told that although male occupiers had piled rocks in the sandy parking lot, had built a bonfire, and had been seen with sticks, there were no sightings of weapons. Staff Sergeant Lacroix also knew TRU had two Sierra observation teams whose roles were to provide cover for the CMU and to gather intelligence. He knew there was concern about snipers and was comforted that TRU would be “the eyes” in the park area. At that time, he mistakenly believed the two Sierra teams were already in position. Staff Sergeant Lacroix also did not know an ERT Oscar team was out that night. Poor communication within the OPP.

Before the CMU started down East Parkway Drive, neither the leader of the CMU nor his second in command Sergeant Hebblethwaite were told of a report about AK-47s, Mini Rugers, or gas bombs in the park or army camp. Had this information been confirmed as reliable by OPP intelligence, Staff Sergeant Lacroix “would have stood the CMU down.” The CMU deployment would have been cancelled. As he said at the hearings, “[o]nly TRU team have armour that can stop an AK-47 round.” The CMU were equipped with soft body armour and not the ballistic armour worn by the TRU team. The CMU was not equipped “for gunfights”; this was “completely outside” the CMU’s “mandate.”

Before the CMU was deployed, Staff Sergeant Lacroix was also told there was a bonfire in the sandy parking lot. More inaccurate information.

Staff Sergeant Lacroix understood the TRU Alpha team led by Acting Sergeant Deane would accompany the crowd management team.

At the CMU briefing conducted by Staff Sergeant Lacroix at TOC, officers received explicit instructions that under no circumstances were they to enter Ipperwash Park. The CMU’s role was to clear the Aboriginal occupiers from the sandy parking lot and the road intersection at East Parkway Drive and Army Camp Road.

When Staff Sergeant Lacroix briefed his CMU team, he updated the officers on the latest intelligence — fifteen to twenty males had sticks and stones but no weapons. If there was “any indication or sighting of a weapon,” Staff Sergeant Lacroix “would give the order ... to take cover” on the ground. The TRU team would “deal with it tactically,” or CMU would wait until the TRU team gave “the all clear.”

The role of Level II Incident Commander Carson was to define the OPP’s mission and objectives. John Carson was responsible for the overall event. The role of CMU Commander Lacroix was to decide the tactics to employ as he led the CMU to the sandy parking lot.

Inspector Carson’s final words to Wade Lacroix confirmed the CMU mission: “Clear the sandy parking lot. If they go freely, let them go”; if they “absolutely refuse to leave, arrest those that do not leave.” As Staff Sergeant Lacroix said, “And so off we went.”

## **14.9 CMU March Down East Parkway Drive toward Ipperwash Park**

The TRU Alpha team, consisting of Acting Sergeant Deane and Constables Beauchesne, Klym and O’Halloran, was deployed slightly ahead of the CMU. They were instructed to walk ahead of the CMU to assess the area, to “be a set of



eyes in advance” of the CMU and “scope out the area.” The Alpha team had radios and headsets. All the TRU members were on the same radio frequency and could communicate with TOC and with the other TRU officers.<sup>4</sup>

The Alpha team split into two-man teams. Officers Beauchesne and Klym moved to the south or inland side of East Parkway Drive, and Officers Deane and O’Halloran went to the north or lakeside of East Parkway Drive. Mark Beauchesne had night vision equipment. No CMU officer had such equipment.

Staff Sergeant Lacroix received an update from TRU before the CMU left the MNR parking lot at approximately 10:27 p.m. The CMU Commander said: “[G]ood news. They’ve got rocks and sticks piled up and we all know we can beat that [inaudible] ... rocks and sticks that’s in our Bailiwick. All we have to worry about is little brown stocks and black barrels.”

The CMU marched from the MNR parking lot down East Parkway Drive toward the park in box formation.<sup>5</sup> There were thirty-two officers. An additional eight-officer arrest team was in the rear. Two canine teams and two prisoner vans followed the arrest team.

Staff Sergeant Lacroix and Sergeant Hebblethwaite were in the middle of the contact squad, with the left and right cover squad on either side of them.

Inspector Carson watched the CMU leave the TOC site at the MNR parking lot.

Members of the CMU, including Sergeant Hebblethwaite, were not pleased to be marching down the road in darkness. As Constable Cossitt proceeded down East Parkway Drive in the right support section of the CMU toward the sandy parking lot, he was anxious: “I can recall being very nervous as we [were] going down into something that [was] unexpected and not sure what [was] going to be at the end.”

The helmets worn by the CMU officers had speakers inside. They could both hear and transmit information.

The distance from the TOC (Tactical Operations Centre) to the sandy parking lot was approximately 800 metres.

Acting Staff Sergeant Kent Skinner advised CMU it had been “spotted by their forward observers” (First Nations people), who were “retreating.” At this

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4 TRU officers were on the TRU frequency that allowed them to communicate with each other and to the TOC. However, to ensure the radio channel was not crowded, one TRU member was assigned to be the communicator with the TOC. Acting Sergeant Ken Deane was designated as the communicator. The other Alpha members would report to him and he would report to Acting Staff Sergeant Skinner.

5 The box formation is used to travel quickly down a road. The contact squad is the first line of the formation, followed by the left cover squad, then the right cover squad, and lastly the arrest team. The officers in this formation are very close together.

point, the CMU had marched about 300 metres down East Parkway Drive. Staff Sergeant Lacroix ordered “dressing shields down,” a command for the CMU officers to put down the face shields on their helmets for protection.

Skinner advised the CMU: “[T]he spotlights are from the occupants and they are roaming wildly.” The TRU leader told the CMU that Sierra 1 and Sierra 2 were “not in position.”

About 500 metres out, Acting Staff Sergeant Skinner radioed: “CMU be advised, party on road may have a weapon in his hand.” Acting Sergeant Ken Deane had transmitted this information to TOC. Kent Skinner was the voice of the Incident Commander in TOC. Inspector Carson and Kent Skinner were in the vehicle together.<sup>6</sup> A male stood on the edge of the sandy parking lot, “with what appeared” to be a rifle.

With his night vision equipment, Constable Irvine from Sierra 1 saw the same Aboriginal man he had seen earlier with the walkie-talkie and long object in his hands. This man was moving toward the advancing CMU. Constable Irvine knew TRU officers Deane, Klym, and O’Halloran were with the CMU. Constable Beauchesne with his night vision equipment also spotted this Aboriginal man and thought he might be carrying a firearm. Constable Beauchesne had crossed the road to convey this information to Acting Sergeant Deane, who communicated this information to TOC.

The CMU were instructed to stop. Staff Sergeant Lacroix split the formation: from the centre, half of the CMU officers moved right and half went left. They were instructed to kneel on both sides of the road. The sandy parking lot was not yet visible to the CMU. The officers waited for the TRU Alpha team to investigate — “all clear,” it was “a stick.” Constable Beauchesne scanned the area with his night vision equipment and confirmed it was a stick, not a gun. The man carrying the stick was Cecil Bernard George.

Roderick George heard OPP communications over the scanner. He heard one officer say, “[T]here’s one along side of the road,” meaning a First Nations person whom the officer thought had a gun. There was a pause, and then the officer said it was a stick, not a gun.

At that point, Acting Staff Sergeant Skinner advised the CMU Commander: “Alpha and Sierra 2 can cover your position.”

The CMU resumed their box formation and the officers and prisoner vans continued eastward toward the sandy parking lot.

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6 John Carson was in the front seat of the TRU truck with Kent Skinner where they stayed for the duration.



## 14.10 Anxiety of First Nations People as They Watch the Police Approach

Cecil Bernard George became increasingly anxious as he continued to walk down East Parkway Drive. He heard “a lot of footsteps ... coming down the road.” Mr. George radioed to the people in the park that “they might be coming this way.” It was dark and he could not discern the figures. But as the footsteps became louder, he saw police officers in formation “completely from one side of the road to the other side” carrying shields. The officers came to a stop and Cecil Bernard heard voices.

As the officers proceeded to march toward the park, Mr. George could see in the moonlight that the police were dressed in “riot” gear, not their usual uniforms. He radioed to the occupiers in the park, “[T]he police [are] coming ... get ready ... It don’t look good.”

As Cecil Bernard walked back toward the intersection of East Parkway Drive and Army Camp Road, he saw some First Nations people in the sandy parking lot. He also saw the occupiers’ spotlights. As the CMU marched closer to the park, Mr. George saw the helmets, face visors, shields, and batons of the “riot police” — he “knew ... it was not good.”

Jeremiah George had walked with Cecil Bernard about half a kilometre on East Parkway Drive to monitor the moves of the police. After waiting for a short while, they saw the officers march shoulder-to-shoulder in their riot gear. Cecil Bernard told Jeremiah to run to the front gate and tell the occupiers to prepare for the police. About twenty-five occupiers were in the park at that time. Jeremiah George, who was highly anxious, ran to the park to the occupiers and then toward the beach, away from what he anticipated would be a police confrontation with the First Nations people.

Isaac Doxtator heard the stomping feet of the police march down East Parkway Drive before he saw the officers. Mr. Doxtator returned to the park and told the occupiers to turn on the spotlights. Two spotlights powered by vehicles inside the park illuminated the sandy parking lot and part of East Parkway Drive.

Cecil Bernard George was nervous. He thought about leaving the area and returning to Highway 21, but decided he did not want to abandon his sister, brothers, and friends in the park. He continued to walk toward Ipperwash Park.

As the police approached the park, Wesley George and the other occupiers saw the OPP dressed in riot gear. They stood shoulder-to-shoulder in rows and stretched across the road. This was a very intimidating sight for the Aboriginal occupiers. The police officers were equipped with bulletproof vests, shields, batons, helmets, and guns. The Aboriginal people had no protective clothing and had sim-

ply stockpiled rocks and sticks and stones on the inside border of the park fence. The Aboriginal people had no body armour or head protection. They also felt greatly outnumbered. As the police officers marched toward Ipperwash Park, the First Nations people were highly anxious and terrified.

When sixteen-year-old Nicholas Cottrelle first saw the CMU, the officers were almost at the end of East Parkway Drive where the road begins to curve. He saw the officers march in sync, dressed in full riot gear. Although it was dark, Nicholas Cottrelle could see the police officers from the reflection of the fire inside the park. “They had those big gloves” that reminded Nicholas of “hockey gloves,” shin pads, full face visors, helmets, shields, and batons. He heard police officers yell commands.

### **14.11 The CMU Arrive at the Sandy Parking Lot**

After Cecil Bernard George communicated by walkie-talkie to the park occupiers that the police were coming, David George and other First Nations people went onto the paved roadway at the intersection of East Parkway Drive and Army Camp Road to watch the OPP approach. David George saw the CMU move toward the park in their grey riot gear uniforms with helmets, visors, batons, shields, and protective pads. As the CMU approached the sandy parking lot in formation, David George shone his spotlight on the officers. The Aboriginal people had two spotlights inside the park near the fence plugged into the cars.

Some of the Aboriginal people in the park included David George’s brother Clayton George; his uncles Roderick George, Stewart George, and Elwood George; his cousins Dudley George, Nicholas Cottrelle, Leland White, and Dale Plain; as well as J.T. Cousins, Kevin Simon, Stacey George, Gina Johnson, Isaac Doxtator, Robert Isaac — his relatives and friends. At the time, the park occupiers were predominantly men, some teenagers, and a few women.

As the police moved toward the park, Gabriel Doxtator turned on the second spotlight, which was hooked to Warren George’s car. He could not see down the road but he could see part of the sandy parking lot and asphalt. There was some light from inside the park store.

The occupiers had built a fire near the park store, the place where most First Nations people had been congregated before the CMU marched down East Parkway Drive. Stones and rocks were stockpiled in preparation for the police. As Kevin Simon said, the Aboriginal people “felt the need to defend [them]selves in some way.”

At no time before night set in did the OPP advise the Aboriginal occupiers that they would not enter Ipperwash Park if the occupiers remained within the park



boundaries. Nor did the OPP, when they arrived at the intersection of Army Camp Road and East Parkway Drive, instruct the occupiers to leave the sandy parking lot and return to the park. Again the opportunity to impart this information to the occupiers was missed.

The First Nations people heard the stomping feet of the CMU officers approach in the darkness. Some of the Aboriginal men ran back to the park, grabbing their sticks and stones in preparation for the police.

They saw OPP officers dressed in grey uniforms, standing in rows with their helmets, pads, and large shields. As they watched the police march down East Parkway Drive in their riot gear, Gabriel Doxtator and other occupiers thought, “[T]hey [a]re going to beat the hell out of us.”

Fourteen-year-old Leland White, son of Stewart George, was at the park on the evening of the police altercation. He saw the police march shoulder-to-shoulder down East Parkway Drive in their riot gear with their shields, bullet-proof vests, and batons. Leland White had great difficulty during his testimony recounting his observations of that very traumatic night. As he said at the hearings, “I don’t want to remember it all ... it’s like a bad dream and I can’t remember.”

In box formation, the CMU continued its march eastward toward the sandy parking lot outside the park. As they marched, Staff Sergeant Lacroix and Sergeant Hebblethwaite stood side-by-side, yelling commands and communicating what they saw as they approached the park. Staff Sergeant Lacroix would yell a command, which was then repeated by George Hebblethwaite, and then by the other members.

Staff Sergeant Lacroix saw people at the intersection of Army Camp Road and East Parkway Drive. The occupiers’ floodlights lit the CMU. Behind the floodlights, an ATV was doing “donuts.”

The CMU continued to march toward the sandy parking lot at a walking pace. Some First Nations people began to back up toward the park. As the CMU crossed onto the edge of the sandy parking lot, only about five or six occupiers remained outside the park near the fence.

As the CMU moved forward toward the sandy parking lot, Acting Sergeant Deane of the TRU Alpha team remained on the left side to cover the officers. Constables Beauchesne and Klym, also of the TRU Alpha team, were on the right side of the CMU and positioned themselves on the grassy hill on which there was a hydro pole just outside an entrance gate to the park on the southeast side of the sandy parking lot. They were elevated and had a good view of the sandy parking lot. Ken Deane positioned himself west of Mrs. Fran Hannahson’s cottage driveway.

At the time, Fran Hannahson was in the white cottage next to the sandy parking lot with her grandson. She was watching television at about 10:30 p.m. when she heard an “extremely loud ... commotion” outside. She ran upstairs from the living room. From a bedroom window, she saw the police in a “very tight knit formation” at the end of her driveway on East Parkway Drive. She saw the police dressed in riot gear, and she heard a lot of shouting. The CMU’s approach to the park was frightening to Mrs. Hannahson and Mrs. Jago, cottagers who watched the events of September 6 from their windows.

It was dark at the sandy parking lot when the CMU arrived. As Constable Root said, other than spotlights and the glow of a bonfire in the area, it was a very dark evening. Constable Root was at the rear of the thirty-two person CMU team as it marched down East Parkway Drive in box formation. As mentioned, this was the first time Constable Root had been deployed as a member of the CMU. He was partnered with Constable Jacklin, the leader of the arrest squad.

Constable Beauchesne and other officers saw about half a dozen Aboriginal people walking in the sandy parking lot. Some carried sticks and baseball bats. Spotlights or headlights shone on TRU officers. Inside the park, Mark Beauchesne saw a fire burning, a stationary bus and car, and at least one all-terrain vehicle. About twenty-five Aboriginal people, many of whom had sticks and clubs, congregated in the provincial park.

Staff Sergeant Lacroix ordered a “cordon formation” as the CMU left the pavement and entered the parking lot. Wade Lacroix manoeuvred the CMU from box formation into the more expansive cordon formation as the officers moved in the sandy parking lot. The CMU Commander realized he was constrained by the size and configuration of the sandy parking lot and would likely encounter difficulties if a confrontation with the First Nations people developed. Wade Lacroix said, “I was limited in my ability to manoeuvre after getting down there because ... there was no wheeled reccy ... [I]t was an extremely risky manoeuvre and I was not fully aware of all the factors.”

Again, had the OPP not been in such a rush to undertake this mission, the CMU Commander would have had the time he needed to prepare for this mission — hasty decisions with unfortunate consequences.

As the CMU approached the park fence, Staff Sergeant Lacroix saw about fifteen to twenty First Nations people around a large bonfire. A picnic table was burning in the bonfire, which he realized was inside the park, and not in the sandy parking lot. The information conveyed to him earlier had been wrong.

As the CMU advanced to the fence line outside the park, the Aboriginal people retreated from the sandy parking lot into the park. The occupiers yelled at



the police, which Constable Beauchesne described as “war cries.” This repeated use of culturally insensitive language and negative stereotypes by OPP officers created barriers and confirmed a lack of respect for the Aboriginal people. Undoubtedly, this created distance and obstacles to communication with the Aboriginal people, and to the objective of Project Maple, which was to resolve the occupation peacefully.

As the CMU came to a halt, the last few occupiers walked through the turnstile into the park. Constable Kevin York, who was in the front contact squad, said the officers were about five feet from the fence. As Michael Cloud said, the occupiers were lined up on the other side of the fence: “[W]e were face to face,” and “they outnumbered us.” The CMU moved up to the fence line and the officers were then ordered to move back toward East Parkway Drive. Staff Sergeant Lacroix thought his “mission to clear the sandy parking lot” was complete.

Sergeant Hebblethwaite radioed to TOC: “Be advised that we’re at the perimeter. The badgers are within the bounds of the park. The badgers are in the park.” In police parlance, “badgers” means “suspects.” Sergeant Hebblethwaite was communicating to TOC that the Aboriginal occupiers had returned to the park.

The occupiers, including Stacey George and Gabriel Doxtator, heard the police on the scanner say, “[T]he badgers are in the park.” As Stacey George said, the occupiers hadn’t “the slightest idea” what this meant.

TRU officers moved with the CMU as it backed onto the paved road at the intersection of Army Camp Road and East Parkway Drive.

At no time did the CMU convey to the First Nations people that if they remained in the park, there would be no confrontation with the police. Nor did they tell the occupiers the OPP had no intention of entering the provincial park. Neither Staff Sergeant Lacroix, Sergeant Hebblethwaite, nor any other officer had a bullhorn or megaphone to communicate these critical messages to the First Nations people. John Carson agreed with the benefit of hindsight that the use of a megaphone could have had “some value.” Nor did the police use their voices to yell this important message to the occupiers. The CMU were busy yelling commands to each other when the officers should have been yelling these crucial messages to the First Nations people.

The occupiers were convinced the police with their riot gear would march into the park and remove and arrest them for the occupation of the provincial park. There was clearly miscommunication on both sides.

The Aboriginal people were at the fence line. The occupiers yelled profanities at the police and said this was their land. There was yelling and swearing by both the police and the First Nations people. Michael Cloud said the Aboriginal

people shouted that the police had no right to be there, and that there was a burial ground in the park. “A lot of our guys kept reminding them that we have ... Native rights, this is a burial ground, and they were told over and over they had no right to be there.”

In his notes, Sergeant Huntley described the shouting from the First Nations people as “war yelps.” Again the use of such language was culturally insensitive and demonstrated that he may have had a negative stereotype of the Aboriginal people.

No officers saw firearms amongst the First Nations people. About twenty to twenty-five occupiers were in the park at that time. This was intended to be a “peaceful occupation” by the Aboriginal people. The First Nations people threw burning sticks, rocks, and other items at the CMU.

As the police backed up toward the roadway, Cecil Bernard George noticed some officers on the hill to the west of the sandy parking lot. The First Nations people in the park were “angered” by the police presence, their riot gear, and their intimidating actions: “there was really no answers to ... why they were there.” As Cecil Bernard George stood by the turnstile inside the park, his fear dissipated and his anger deepened.

#### **14.12 Cecil Bernard George Walks into the Sandy Parking Lot: “Punchout” by the CMU**

After the police retreated from the park fence, Stewart George’s black dog, who was barking at the turnstile, walked into the sandy parking lot toward the officers. One of the officers kicked the dog. David George saw the dog spinning in the dirt. Elwood George heard his brother Stewart’s dog yelping, as did Gabriel Doxtator and the other Aboriginal occupiers. Stewart George became very upset and asked the police who had kicked his dog. An officer yelled back a rude and threatening comment. Fourteen-year-old Leland, Stewart George’s son, heard the officer say: “I did. What are you going to do about it?” Other occupiers heard the same comment.

Cecil Bernard George stood by the turnstile inside the park. The anger began to build. Mr. George decided to try to speak to the OPP. The occupiers began to throw rocks and burning sticks. Cecil Bernard looked around for the Anishnaabeg police, “but they were no where in the area ... there [were] no Indian cops there to help [them to] communicate.” He could not “understand why [the] Native police weren’t involved ... at the beginning” of the occupation.

It is very regrettable that the OPP did not seek the involvement of First Nations police services in the Ipperwash occupation. Nor did the OPP seek the



assistance of First Nations mediators. The OPP knew it was experiencing great difficulties in opening up communication and engaging in dialogue with the Aboriginal occupiers. At this critical time, the presence of a First Nations police service or First Nations officers could have helped defuse the high tension between the OPP and the Aboriginal people. A crucial missed opportunity. Tragic consequences followed within minutes.

Cecil Bernard's anger continued to build:

*Mankind then filled me with so much anger at that point ... no one would stop, no one would come out and try to talk to us. I tried talking, but it seemed like they were there to do a job that they were trained to do. No one knew why ... they were there except for they were there to show force. I knew why. I knew something bad was going to happen when that feeling took over me. (emphasis added)*

Cecil Bernard George picked up a steel pipe. In emotional testimony, he described how he walked into the sandy parking lot with the pipe in his hands, believing he must defend his family and friends: "Protect the ones you love behind you at any cost." He saw all "these police officers in front" of him. Cecil Bernard George testified:

I tried to keep my anger inside the best I could, and then I told them that our grandfathers were buried there.

Staff Sergeant Lacroix and the CMU had at this time thought their "mission to clear the sandy parking lot" was complete. But as the CMU was about to transmit "they're in the park, mission accomplished," they saw a short "rotund man" come through the turnstile toward the front contact squad, swinging a six or seven-foot pole. They heard Cecil Bernard George and Aboriginal people yell, "[Y]ou're standing on sacred ground," and "[O]ur grandfathers fought for this land," and "[G]et back on the Mayflower." Sergeant Hebblethwaite also heard a "voice" say that his grandfather was buried on the property, and that it was Aboriginal land. That voice belonged to Cecil Bernard George.

Until this time, Staff Sergeant Lacroix did not know the occupiers considered the park sacred ground. The OPP officer commanding the CMU did not understand that this was a reason for the occupation of Ipperwash Park. He did not adequately understand the history and the culture of these First Nations people, and that the tactics traditionally employed on an unruly soccer crowd were not appropriate in an Aboriginal context. He expected the occupiers to react like a soccer crowd. He did not understand the Aboriginal people's connection to the land and the significance of their assertion that burial grounds, sacred sites, were in the

park. Many of the occupiers were related by blood — brothers, sisters, cousins, uncles. Family and friends participated in this occupation, not strangers in a soccer or hockey crowd. The CMU Commander did not understand the context of this Aboriginal protest or the issues confronting the Stoney Point people. Another fatal deficiency in the OPP operation.

Cecil Bernard George entered the sandy parking lot to try to persuade the officers not to confront the occupiers — not to use their weapons on his people. As he said at the hearings: “The first thing I told them was put their guns away.” Cecil Bernard was trying to communicate with the police.

Once again, the OPP did not ask or instruct Cecil Bernard George or the First Nations people to remain in the park. David George said at the hearings, “[W]e assumed they were there to take us out of the park.” Communication by the OPP officers at this critical juncture may have averted the physical confrontation and ultimately the death of Dudley George.

Staff Sergeant Lacroix testified that Cecil Bernard George approached the CMU, “getting very, very close” to an officer on the front contact squad. Wade Lacroix was “concerned” about the safety of his officers. This was a perfect opportunity for the CMU Commander to yell to Cecil Bernard and the other Aboriginal occupiers that the police had no intention of engaging in a confrontation or arresting them as long as they remained in the park. He failed to impart the message at this critical time that the OPP had no intentions of entering Ipperwash Park.

Fourteen-year-old J.T. Cousins and sixteen-year-old Nicholas Cottrelle watched Cecil Bernard George walk out of the park turnstile into the sandy parking lot to tell the police that this was Aboriginal land, their ancestors’ land, and to leave the area. Dale Plain, also sixteen years old, heard Cecil Bernard George yell at the police that they were trespassing “on our grandfathers’ graves.”

Cecil Bernard George was not a resident of the barracks or built-up area. He lived at Kettle Point and was a Band Councillor. As David George explained, Cecil Bernard George had come to the park that night in friendship and to be supportive. Michael Cloud urged Cecil Bernard George to return to the park, but Mr. George unfortunately remained in the sandy parking lot.

The CMU had backed up to Army Camp Road and set up a cordon formation.<sup>7</sup> Staff Sergeant Lacroix was in the middle of the formation on the pavement on the edge of the park, and the front contact squad was about fifteen to twenty feet

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7 The cordon formation is recommended for disorderly crowds. This formation tends to be intimidating because it gives the impression that twice as many officers are present. In the cordon formation, the first line is the contact squad. The officers are in pairs and are spread out ten feet apart from the next pair. The left and right cover squads are approximately twenty feet behind the contact squad on each side and are also spread out. This provides approximately sixty feet of coverage. The arrest squad is centred about twenty feet behind the left and right cover. From an aerial view, the cordon formation looks like an airplane. The contact squad is the nose, the left and right cover are the wings, and the arrest squad is the tail.



into the sandy parking lot. As the CMU formed this defensive position, Staff Sergeant Lacroix noticed a wire fence behind the CMU: “We really had no place to go from where we were.”

As mentioned, the CMU Commander did not have time before the deployment to the sandy parking lot to map out the terrain and dimensions of this area.

The Aboriginal occupiers in the park then heard a voice order “*punchout*,” and the police advanced at a fast pace into the sandy parking lot, beating on their shields.

Cecil Bernard George heard the “punchout” command and saw the police charge forward. Mr. George knew the police “were coming to punch [him] and punch everyone else that was in their way.” As he said, “the Indians had sticks and stones and they had guns.”

Staff Sergeant Lacroix commanded the “punchout” — a tactic in which the CMU officers ran toward the occupiers and yelled with shield chatter, the purpose of which was to intimidate the occupiers and have them return to the park. Inspector Carson explained at the hearings the philosophy of punchouts — to frighten protesters, have them retreat, and arrest any protesters who remain at the site.

On Staff Sergeant Lacroix’s instructions, the CMU ran toward Cecil Bernard George. It was approximately 10:58 p.m. Physical contact was made with the First Nations people.

As Cecil Bernard George swung his steel pipe, he found himself in the middle of a “nightmare.” He heard the “echo” of “glass breaking.” He saw “shadows” around him, “hitting at me, trying to kill me.”

Staff Sergeant Lacroix described a male with a steel pole, about six feet in length, running toward him. The swinging pole made contact with Staff Sergeant Lacroix’s Plexiglas shield, the edge of his helmet, and his shoulder. The Plexiglas shield broke in half. With his baton, Staff Sergeant Lacroix struck the man’s left clavicle shoulder-tip area. The Aboriginal man dropped the pole and fell down. Sergeant Hebblethwaite saw a person on his back on the ground with his arms and legs “flailing.” A group of officers were bent over him. Staff Sergeant Lacroix could not identify the man who struck his shield other than that he was five foot ten or five foot eleven inches — he was a “silhouette.” That “silhouette” was likely Cecil Bernard George.

Constable Chris Cossitt of the right squad testified that he ran toward an Aboriginal man, whom he thought was Cecil Bernard George, and knocked him down with his shield. He said that Mr. George was swinging an object in a forward motion. Constable Cossitt hit Mr. George in the arms and shoulder with his shield, and the two men fell to the ground.

Constable Cossitt carried a clear plastic shield with the word “police” inscribed across it on a diagonal. It was approximately three and a half to four feet in length, about twenty-four inches wide, and about one-quarter inch thick. Constable Cossitt made contact with the full length of his shield. The person he identified as Mr. George fell down on his back and began to kick. Constable Cossitt swung his baton to try and block the kick. Chris Cossitt said he struck at Mr. George’s left leg but is uncertain whether he made contact with him. Constable Cossitt stated at the hearings that he does not know if his baton contacted Mr. George’s body.

Cecil Bernard felt the officers hit and kick him and he believed the police were determined to “kill” him. He tried to get away, but the police continued to hit him. Cecil Bernard found himself on his back and tried to protect his face as he kicked out at the officers in an unsuccessful attempt to escape.

Fourteen-year-old J.T. Cousins and the other First Nations people watched in disbelief as the police charged Cecil Bernard George. Nicholas Cottrelle heard the police order and then saw the officers rush forward in formation toward Cecil Bernard George. He saw them knock Mr. George down with their shields and begin to beat him. About eight officers were involved. Cecil Bernard was curled up on the ground, trying to protect himself. David George also saw Cecil Bernard fall backwards and try to use his arms to protect himself. The officers surrounded Cecil Bernard George and kicked and clubbed him. The First Nations occupiers watched Cecil Bernard being beaten by the police. Elwood George and others saw the police kick and strike him with their batons.

Officers shouted “punchout” and other orders to other officers, but no words were shouted by the OPP to the Aboriginal occupiers. CMU officers again did not yell to the Aboriginal occupiers that if they remained in the park, there would be no confrontation with the OPP. Had the OPP given this warning, the altercation with Mr. George and the occupiers’ subsequent re-entry into the sandy parking lot may have been avoided.

Gina Johnson, Cecil Bernard George’s sister, watched the police beat her brother. She started to scream, “[S]omebody do something. They’re going to kill him. Get out there and do something.” Cecil Bernard George was kicking and trying to “get away” from the police. The Aboriginal occupiers stood inside the park fence watching Cecil Bernard being beaten by the police and quickly decided to heed Gina’s plea.

It was a “split-second” decision when the First Nations people agreed as a group to stop the beating. As Elwood George said, we decided we would go out there and “do whatever we could to try to stop them.” Elwood and the other occupiers felt no one would be able to sustain the “type of punishment or beating”



administered to Cecil Bernard George for more than “a minute or two.” The police kicked and hit him with their batons. As Elwood George said, seeing that made him want to go and help — that was “a natural thing to feel.”

About fifteen occupiers emerged from the park into the sandy parking lot, carrying sticks, clubs, and poles. Their purpose was to rescue Cecil Bernard George from the police beating.

Nicholas Cottrelle ran with approximately fourteen other First Nations people across the park fence into the sandy parking lot to rescue Cecil Bernard George. This is “when we had our first fight with the cops.” The sixteen-year-old carried his baseball bat. People were shouting. Fourteen-year-old Leland, son of Stewart George, did not go into the sandy parking lot during the altercation. He remained within the park boundaries. He decided to go into the school bus with his dog because he “felt safer there.”

Some of the Aboriginal people involved in the altercation were not from Stoney Point. They included Robert Isaac from Walpole Island, Gabriel Doxtator and Al George from Oneida, Les Jewell from the U.S., and Dutchie French from Muncey. Neither the Stoney Point people nor the Aboriginal people from outside the community were armed during the confrontation in the sandy parking lot.

Dudley George was a member of the group that left the park to help Cecil Bernard George.

### **14.13 Altercation between the OPP and Cecil Bernard George**

After carefully analyzing the medical evidence, which I discuss in Chapter 17, the evidence of the police, and the testimony of the First Nations occupiers, I have concluded that Cecil Bernard George was excessively beaten on his head and face by the OPP.

Constable Wayne Jacklin, the leader of the CMU arrest team, saw a person on the ground. He directed the arrest team to move forward into the sandy parking lot.

Constable Root saw members of the contact squad struggling with an occupier. The arrest squad was instructed to proceed to this site and remove the First Nations person. As Constable Root advanced, he saw eight to ten officers from the contact squad standing around the person who was on his back on the ground. The officers were trying to take control and subdue the occupier, who was trying to resist the arrest by kicking and flailing his arms. Constable Root saw one officer strike Cecil Bernard George with an ASP baton as many as two to three times.

Constable Sam Poole, also a member of the arrest squad, saw Cecil Bernard George lying on the ground ahead of him with several officers standing nearby.

As Constable Poole approached, he saw an OPP officer deliver “a kick” to Mr. George’s “mid-section.” Constable Jacklin also saw one of the officers kick Mr. George with his boot. Constable Jacklin was not able to identify the officer at the hearings, but said he carried a shield. This meant he was not a member of the arrest team.

Constable Bittner, another member of the arrest team, also saw Cecil Bernard George lying on the ground in the sandy parking lot surrounded by CMU officers. He saw an officer strike Mr. George with a baton twice in the right shoulder area. Because of the darkness and the fact that no badge numbers were on the helmets, Constable Bittner also could not identify the officer.

Unfortunately, neither the uniforms nor the helmets displayed the officers’ names or badge numbers; therefore, the identity of the officers who kicked and hit Cecil Bernard George with their batons was not easily discernible. It would have been advantageous to have the name of the officer inscribed on his clothing or helmet. OPP Commissioner Gwen Boniface testified that the OPP have made changes in this regard since Ipperwash.

Constable Denis LeBlanc, a driver of one of the prisoner vans, saw an officer administer two motions of the baton in Cecil Bernard George’s direction. He saw the officers fight with Mr. George, jump on top of him, and turn him over to pin him down. It was a physical fight.

Cecil Bernard George testified that the police repeatedly hit and kicked him, and he was convinced they were trying to kill him. He was “pile-bagged” several times — officers jumped on him and held him down.

As the CMU members moved forward toward the park fence in the punchout in which Cecil Bernard George was arrested and the First Nations people came over the park fence into the sandy parking lot, the occupiers and officers made contact and a number of confrontations took place simultaneously.

Kevin Simon had two pieces of firewood in his hands that he threw at the police — one piece hit the helmet of a CMU officer. David George hit an officer’s shield with a baseball bat, and he was clubbed from different angles. He regained his composure and again hit and broke an officer’s shield.

Warren George threw rocks and other items at the police, as did Wesley George, who threw stones and pieces of wood. Elwood George struck an officer’s helmet with a large club in the sandy parking lot. It was a limb from a tree, about four feet long, two inches round. Stewart George hit an officer’s shield and helmet with a pickaxe handle. Stewart George was hit by a police baton.

Michael Cloud took a fifteen-to eighteen-inch burning stick from the bonfire where the picnic table burned and threw it at the police. He also threw a burning broom handle at the officers.



Elwood testified at the hearings, “[W]e were very badly outnumbered. Things weren’t going too good for us.”

Constable Kevin York made contact with a large occupier who struck his shield with a baseball bat. In turn, Kevin York hit the occupier’s knee with his baton.

An occupier’s club hit Sergeant Rob Huntley’s shield. The OPP Sergeant in turn hit the occupier’s leg.

TRU Constable Mark Beauchesne watched the fifteen First Nations people emerge from the park yelling taunts and throwing items. He saw the CMU rapidly advance to the park fence and overrun several Aboriginal people. Constable Beauchesne watched these events from the top of a hill on a grassy dune. He watched the clusters of officers physically engage with the First Nations people. He saw the First Nations people throw objects at the officers. Constable Beauchesne felt somewhat vulnerable because, unlike the CMU, the TRU officers were not equipped with helmets, visors, or shields.

Constable Sam Poole physically moved two officers out of the way in an attempt to get Cecil Bernard George under control to handcuff him.

Constable Root had difficulty placing handcuffs on Cecil Bernard George, who continued to resist the arrest. The occupiers continued throwing items at the officers, one of which hit Constable Root’s helmet and damaged it. Constable Jacklin instructed the arrest team to move Mr. George out of the area. The throwing of projectiles by the First Nations people intensified.

Four officers, one of whom was Sam Poole, each took an arm or leg of Mr. George and moved him out of range of the projectiles. Mr. George was carried to the rear of the CMU and placed near the prisoner van. Sam Poole said Cecil Bernard George was handcuffed with his hands behind his back. Constable Poole thinks his ankles may also have been restrained.

Cecil Bernard George’s body “hurt all over.” He felt pain in his face, head, arms, and legs. He stopped resisting the police. He heard voices and then felt his hair being pulled. Mr. George was moved and placed inside a vehicle.

David George saw Cecil Bernard George go limp. He and other First Nations people saw the officers drag him by the hair. David George thought Cecil Bernard George had lost consciousness.

Constable Poole denied that he had dragged Cecil Bernard George by the hair to the van, nor did he see other officers do this. Nor did Constable Jacklin see any officer drag Cecil Bernard George by the hair.

Constable Bittner was one of the arrest team members who carried Cecil Bernard George to the van that was parked on East Parkway Drive. Mr. George, he said, was carried to the prisoner van face down, his hands and ankles cuffed. Constable Bittner claims he did not see any officer drag Mr. George by his

hair. Constable Bittner had immobilized Cecil Bernard George's ankles while another officer had attached flex cuffs, and Constable Bittner then placed metal handcuffs to Mr. George's wrists.

Constable Jacklin, as well as other members of the arrest team, noticed blood on Cecil Bernard's lips, cuts near his mouth, and swelling on his face. Constable Jacklin did a cursory check of Mr. George's condition, but does not recall checking the back of his head. Nor did he determine whether Mr. George had tender spots on his body. Mr. George's eyes intermittently opened and closed. Constable Jacklin was not sure whether Mr. George was conscious.

Constable Poole said Mr. George stopped struggling and was no longer speaking.

Constable Root observed lacerations and blood on Mr. George's face. The prisoner was subdued. Constable Root was uncertain whether Mr. George was conscious.

Cecil Bernard George was placed face down on the ground outside the prisoner van. Constable Bittner described him as very passive and also did not know whether Mr. George was conscious. One of the officers opened the rear door of the van, and Cecil Bernard was lifted into the police vehicle. After Mr. George was lifted, Constable Bittner noticed a wet spot on the roadway, which he assumed was blood.

Constable Jacklin directed that Cecil Bernard George be placed in the prisoner van in handcuffs. He asked Constable LeBlanc to get an ambulance and medical attention for Cecil Bernard George. Constable LeBlanc made a radio request for an ambulance.

Denis LeBlanc asked medic Slomer to check the prisoner's condition. Constable LeBlanc went to Constable Marissen's van and opened the back doors. Slomer entered the van, examined the patient, and said the prisoner needed to be transported to hospital immediately.

When Constable LeBlanc had opened the prisoner van door, Cecil Bernard George was lying on his side. He had an abrasion above his eye, blood around his mouth, and a swollen and cut lip. Constable LeBlanc did not assess Cecil Bernard George's level of consciousness. Denis LeBlanc went to the ambulance at TOC and told the two attendants to come to the prisoner van.

Constable LeBlanc removed the handcuffs from Cecil Bernard George and helped move him onto a gurney. He instructed the ambulance attendants to transport the patient to Strathroy Hospital. At that time, Constable LeBlanc did not know there was a difference between St. John Ambulance attendants and EMS. He instructed two uniformed officers to follow the ambulance to the hospital and to remain with the patient who was under arrest. Constable LeBlanc did not know



what Mr. George had been arrested for. Cecil Bernard George's trip to the hospital is discussed in Chapter 17.

When TRU medic Ted Slomer asked Cecil Bernard George a question, he did not respond. Constable LeBlanc thought Cecil Bernard George was intoxicated. I find this explanation difficult to believe.

Constable LeBlanc admitted that he did not smell alcohol on Mr. George. Constable LeBlanc had seen the motion of two baton strikes toward Cecil Bernard George, he had seen police officers fighting with and on top of Mr. George, and he had seen Cecil Bernard George kicking and trying to get away from the police. He also saw the injuries to Mr. George's face, including an abrasion near his eye and on his lip. Clearly, Mr. George's behaviour and physical condition were consistent with someone who had sustained trauma to his head. I do not accept Constable LeBlanc's explanation that he thought Cecil Bernard George was under the influence of alcohol.

In my view, Constable LeBlanc's assumption was demonstrative of the negative stereotyping of First Nations people. As I discuss in the medical chapter on Cecil Bernard George, the blood tests performed at Strathroy Hospital confirmed that Cecil Bernard George had no alcohol in his blood on the night of September 6. He was unable to respond to questions because of the severe beating he had sustained in the confrontation with the OPP that night.

#### **14.14 The Bus and Car Emerge from the Park**

Nicholas Cottrelle was one of the First Nations people who crossed the fence into the sandy parking lot to rescue Cecil Bernard George after the CMU Commander ordered the punchout. His baseball bat broke in half when he came in contact with an officer. The officer, in turn, hit him on the leg. Nicholas Cottrelle returned to the inside of the fence to retrieve some other items, such as rocks, to hurl at the officers.

It was at this time that a First Nations occupier yelled, "[G]et that bus over there. Get that bus out there." Kevin Simon explained, "[A] lot of us didn't know what to do"; the First Nations people saw "what [they] were up against." The decision to drive the bus into the sandy parking lot was made to rescue Cecil Bernard George from the police beating. Roderick George explained that because the Aboriginal people did not have any guns, the purpose of the bus was to "split the police officers up" — to divide the officers. Elwood George was one of the occupiers who yelled for the bus because he wanted to help stop the beating. Elwood George and others thought they were losing their fight with the police.

Nicholas Cottrelle ran to the school bus and climbed into the driver's seat. As

mentioned, Leland White, who was panicked by the OPP's approach in riot gear, had gone into the bus with his dog because he "felt safer there." Leland White had been on the bus only a short time when his cousin Nicholas climbed in and started to drive it out of the park. The park gate was blocked by a dumpster. Nicholas hit the dumpster that obstructed his way and plowed through the park gate. Trying to find Cecil Bernard George, Nicholas drove through the sandy parking lot in the direction of East Parkway Drive and toward the officers. Nicholas Cottrelle drove through the police line and saw police vans on East Parkway Drive. He saw "cops in the ditches and bushes" as he drove as far west as a driveway on East Parkway Drive (Mrs. Jago's cottage, "6842"). Nicholas Cottrelle testified the maximum speed he travelled was approximately fifteen kilometres an hour. Nicholas did not see Cecil Bernard George.

Roderick George noticed his son Nicholas Cottrelle was driving the school bus. He saw the bus push the dumpster out of the way and travel down East Parkway Drive. He followed the bus, worried it was travelling too far from the park. He saw officers lying in the ditch on the south side of East Parkway Drive.

Staff Sergeant Lacroix and the other officers watched the bus move forward through the sandy parking lot toward the road. They watched the car push the dumpster across the sandy parking lot in the direction of the officers. Staff Sergeant Lacroix yelled, "[S]plit formation," to move his officers off the road to enable the bus to drive through. But the bus drove near the fence where CMU officers were standing. Some officers tried to climb the fence, while others "tried to dive ... back towards the pavement." Sergeant Hebblethwaite was convinced "someone was going to be killed as the bus neared [their] men."

TRU Constable Mark Beauchesne, a member of the Alpha team, also saw the bus leave the park, accelerate through the sandy parking lot, and drive toward the officers on East Parkway Drive. Initially Constable Beauchesne thought the bus driver intended to intimidate the officers but quickly realized the bus was continuing "right through the centre of the road, right through the CMU members."

Constable Beauchesne's initial reaction was to "shoot the driver to stop him," but he "ruled it out immediately ... because the bus was already moving too quickly and it wouldn't have stopped the bus." As the bus approached the police, CMU officers dove out of the way. Constable Beauchesne thought CMU officers had been "run over by the bus."

Staff Sergeant Lacroix pulled out his gun but realized the officers in the ditch were between him and the bus — he did not have a "clear shot." Sergeant Hebblethwaite also drew his pistol but concluded it was not safe to fire as he feared he would hit one of his officers.



Constable Jacklin, who was at the prisoner van with Cecil Bernard George, heard a commotion and decided to join the rest of the CMU. He saw officers diving out of the way of the school bus and jumping into the ditch as the bus moved toward them. He was convinced the driver was trying to “take [the] officers’ lives” on the road. In an attempt to disable the bus, Constable Jacklin activated his pepper fogger. The bus eventually stopped, and Constable Jacklin saw a male teenager — it was Nicholas Cottrelle.

Constable Root saw the yellow school bus emerge from the park and approach them westbound on East Parkway Drive. The bus was being driven erratically. Constable Root sought cover in a ditch with Constable Ternovan. Constable Bittner was another officer who jumped from the roadway into a ditch to avoid being struck by the bus.

Denis LeBlanc was at the prisoner van on East Parkway Drive when he saw the school bus exit the park and drive toward the CMU officers. Silhouetted by the headlights, he saw officers diving and running out of the way of the bus. There was a lot of commotion. Constable LeBlanc thought the bus might have hit the officers.

Ken Deane claimed that as the bus drove past him on East Parkway Drive, he saw a muzzle flash originate from the interior of the bus. He claimed the muzzle flash originated half to three-quarters from front to back on the right side of the bus. He did not shoot at the bus. He thought the occupiers were trying to shoot at officers on East Parkway Drive, and he considered it attempted murder.

As Nicholas Cottrelle testified, “there w[ere] absolutely no firearms in the park” that evening — “it was a peaceful occupation.” Leland White also said it was not possible that someone shot a gun from inside the bus.

It is my view that the muzzle flashes Acting Sergeant Deane claimed he saw did not originate from the interior of the bus. No other officer saw muzzle flashes emanate from inside the bus. The only two people in the bus were sixteen-year-old Nicholas Cottrelle and fourteen-year-old Leland White. Neither teenager was in possession of guns on the night of September 6.

Shortly after Nicholas Cottrelle started to drive out of the park toward the sandy parking lot, Warren George ran to his car inside the park. Gabriel Doxtator was aiming the spotlight at the officers at that time. Warren George drove to the sandy parking lot “to try and help Slippery ... get away from the police.”

Gabriel Doxtator left the spotlight because Warren George needed to pull his car out and he lost his battery source. Gabriel Doxtator assumed Warren George would use his car to push the police back. With a six-foot stick in his hand, Gabriel went into the parking lot to confront the police. He hit their shields. He followed the bus and car as they drove west on East Parkway Drive.

Stacey George also thought the bus and car emerged from the park to rescue the occupier who was being beaten in the sandy parking lot. At the time, he did not know it was his brother Cecil Bernard George.

Warren George followed the bus through the gate to East Parkway Drive. He drove at the same speed as the bus, which he estimated was less than twenty kilometres an hour.

Fran Hannahson, who was in the white cottage with her grandson next to the parking lot, heard the bus engine and something loud being pushed. It was the dumpster. She saw the bus gather speed as it left the park, and she saw figures running next to the door-side of the bus. She also saw the car drive from Ipperwash Park and thought that if the police did not jump out of the way, these vehicles would hit them. The bus and car disappeared from her sight. Mrs. Hannahson was in a state of panic. She went to her grandson's bedroom and stood by the window.

In his peripheral vision, Staff Sergeant Lacroix saw the four-door car travel on the lake or north side of East Parkway Drive in a westerly direction. It suddenly swerved toward about ten CMU officers. Staff Sergeant Lacroix saw three of his officers hit by the front of the car:

I [saw] one officer try to jump up and I think he thought he was going to use a shield to buffet himself, but the shield kind of folded and I saw his face-shield kiss the hood. It kind of just crumpled up in the hood. I saw another one get hit and sent flying backwards. I saw his arms go out and he landed on another couple of public order members that I think knocked them down. He ended up on the ground — what appeared to me [to be] his legs underneath the hood. There was another of them struck by — he kind of went off the edge of the fender.

Constable York also saw the car hit three to five CMU officers, some of whom fell on the hood of the car and some to the ground.

Constable LeBlanc saw the bus pass his prisoner van before it came to a stop. He looked into his rear-view mirror and saw the car driving through the sandy parking lot. As he said at the hearings, it looked like it was “coming straight at me.” The car made a sharp right turn toward officers on the side of the road. Constable LeBlanc saw an officer on the hood of the car, and it appeared the car bumper also hit several officers.

Constable Beauchesne's attention was also diverted from the bus to another vehicle “coming out of the sandy parking lot area.” The car drove to the side of the road toward six or eight CMU officers. Constable Beauchesne saw officers fall



onto “the hood of the car” and heard the noise of their equipment as it hit against the vehicle. Constable Beauchesne thought the car had “run over” part of the CMU team. He saw the silhouette of one person, the driver of the car. Mark Beauchesne decided to shoot the driver “if he made one move again towards the officers.”

### 14.15 The OPP Shoot at the Car

After the car came in contact with the officers, it reversed, its tires squealed, it lurched, and then it slammed into drive. Warren George said that as he headed toward a crowd of officers, “an officer stepped in front of [him] and pointed a gun at [him]. [He] turned the wheels to the right and stepped on the brakes.” The reason Warren George stopped and “cranked” his wheel was to avoid being shot. The officer “started shooting at [him].” Warren George knew he had “hit a number of officers and knocked a ... few of them down” with his car. He said he travelled to about the second driveway on East Parkway Drive (Mrs. Jago, “6842”). As he backed up his car, Warren George heard “a lot more shots go off.”

The shots fired at his car shattered the window while he was reversing. Warren could see the muzzle flash of the officer who pointed his gun at him and fired. Warren George did not have a firearm in his vehicle. He did not see any firearms in the park that day nor had he seen any since September 4, 1995, when the First Nations people had occupied the park. He said gunshots were fired when he started to back up the car after knocking down three or four officers. A few officers clubbed his car with batons.

Wesley George also saw an officer point his weapon at the car and heard three or four gunshots.

Staff Sergeant Lacroix testified he was fifteen to twenty feet from the car with his weapon drawn. He was determined to “stop” the driver of the car. He ran toward the car, trying “to get in close” because he “wanted to fire down ... to make sure there was no ricochet.” Wade Lacroix fired “two to three rounds” down “into the driver’s compartment.” He did not see any passengers in the car.

Constable Beauchesne testified that he “fired two rounds in very rapid succession” with his rifle at the driver. The driver was about twenty metres away. The vehicle stopped. Constable Beauchesne did not see a firearm in the car, nor did he see any other occupier with a firearm the night of September 6. It was after Constable Beauchesne fired his gun that he heard other gunfire, which he believed to be police gunfire.

George Hebblethwaite fired four rounds at the right front corner of the car, hoping to disable the car or the driver. He missed the car.

As Wade Lacroix was firing, he heard other gunfire, and saw two to three muzzle flashes. The car backed away immediately. At no time did Staff Sergeant Lacroix see any firearms in the car, nor did he see any First Nations person in possession of a gun that evening.

Constable York drew his firearm after the car reversed. He heard gunshots prior to discharging his gun. He shot into the windshield of the driver's side but was uncertain if he struck the vehicle. It was Constable York's "intention ... to stop the vehicle and the only way to stop the vehicle from driving forward twenty feet and potentially killing officers was to shoot the driver." Like Staff Sergeant Lacroix, Constable York saw no firearms in or protruding from the car, nor did he see any firearms in the possession of any First Nations people that night.

Nor did Acting Sergeant Deane, who was on the north side of East Parkway Drive, see any muzzle flashes from the car. He had seen the car travel down East Parkway Drive, veer sharply to the right and strike approximately three to four CMU members. He saw one CMU member fall on the hood of the car and then roll off. As the car reversed, Ken Deane walked forward on the lake side of East Parkway Drive.

Denis LeBlanc was at the prisoner van on East Parkway Drive when he saw muzzle flashes in line with the driver's door and in front of the car. Constable LeBlanc was only able to identify the location of the muzzle flashes, not their source. It is possible, he said, that the officers' guns were the source of the flashes. He did not see a weapon during this entire incident.

By contrast to the other officers, Constable Chris Cossitt claimed he saw a barrel come out of the car. He claimed the barrel was consistent with a 12-gauge shotgun. He said he was twelve inches from this barrel when it was discharged. He claimed he could see muzzle flash from it and could feel the heat. He said that as the barrel came out of the open window of the car, it was twenty to twenty-four inches from him, and that he feared for his life when the gun was discharged. He said he did not shoot at the driver because he felt his life was in jeopardy, he had to leave the area, and he could not access his weapon quickly enough.

I do not accept Constable Cossitt's evidence that a shotgun was in the car or that it was discharged. Other OPP officers who were close to and who shot at Warren George's vehicle did not see any firearms in the car. Warren George also testified that he did not have a firearm in his vehicle as he drove out of the park, through the sandy parking lot, to East Parkway Drive.

Fran Hannahson, who had watched both the bus and car drive out of the park and into the sandy parking lot and then disappear from her sight, was in a high state of anxiety. She was at the window in her grandson's bedroom. She heard the gunshots. She stood next to her grandson who was asleep on the top bunk bed. She



placed her hand on his head, “wondering should [she] be pulling him off [the] bed or what should [she] do.” As mentioned, Mrs. Hannahson did not have a telephone in her cottage.

### 14.16 The OPP Shoot at the School Bus

Sixteen-year-old Nicholas Cottrelle and fourteen-year-old Leland White and his dog were the only occupants on the bus on the night of September 6. After Nicholas stopped the bus on East Parkway Drive, he tried to shift the gears into reverse and the grinding of gears could be heard. As he was backing up in the direction of the park, he and Leland heard “gunfire,” bullets hit the bus, and a “window shatter.” Nicholas saw police and guns and felt a “burn on [his] back.” He told Leland he thought a bullet had hit him but that he was able to continue to drive the bus. Leland White was crouched on his knees and his dog was barking. He was worried about the safety of his dog whom he wanted to protect. He was concerned his dog might be shot, and that he too might be shot. He placed a laundry basket at the rear of the bus at the window to prevent the police from entering the school bus.

Constable Kevin York watched his partner Constable Sharp fire at least one round at the bus as it was reversing. When Constable York saw the bus reverse, he realized his safety was in jeopardy and he jumped into the nearest ditch. At no time did Constable York see any firearms in or protruding from the bus. Nor did he see firearms in the possession of any First Nations person that night.

Constable Jacklin saw a muzzle flash as the bus was reversing but could not identify the source of the muzzle flash. He did not see any gunfire emanate from the bus, and he assumed the muzzle flash was from a police officer’s firearm. He did not see any First Nations people in the vicinity of the muzzle flash. Throughout the entire confrontation that night, Wayne Jacklin did not see firearms in the hands of any First Nations occupier.

Mrs. Jago, who lived at 6842 East Parkway Drive, passed away before she was scheduled to testify at the Inquiry.<sup>8</sup> From her cottage, she could see the yellow school bus and the car. She saw the OPP officers in grey uniform, and heard “screaming and shouting.” She also saw the bus go into reverse at the end of her driveway. She heard gunfire. She moved back from the window because of the danger.

Despite the injury on his back, Nicholas Cottrelle crouched low and continued to drive the bus toward the park. Warren George backed his car toward the park. He could feel his car tire going flat. He knew he had to “get back into the park.”

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<sup>8</sup> Mrs. Jago’s statement was filed as an exhibit as she died before the time she was to testify at the Inquiry.

Acting Sergeant Ken Deane, who was on the north side of East Parkway Drive, walked in the direction of the park.

### 14.17 Dudley George is Shot

Acting Sergeant Deane of the TRU Alpha team considered the use of the school bus and car by the First Nations occupiers as acts of aggression. He and the other OPP officers did not understand that the First Nations people had resorted to those vehicles as a means of rescuing Cecil Bernard George from the beating by the police.

As the school bus began to travel in reverse toward Ipperwash Park, a succession of gunfire was heard. Constables Beauchesne and Klym, members of the Alpha team, were on the south side of East Parkway Drive at the time, and Acting Sergeant Deane and his partner Constable O'Halloran were on the north side of East Parkway Drive. Mark Beauchesne heard what he believed was police gunfire to his left, where Acting Sergeant Deane was positioned.

At 11:03 p.m., the words “[S]hots fired, shots fired,” yelled by the CMU Commander Lacroix, could be heard over the radio transmission. Constable LeBlanc, who was in the prisoner van, inscribed “heard gunshots,” and “rapid fire” after this succession of shots was heard. Just prior to this, Constable LeBlanc had requested an ambulance for the Aboriginal man who had been arrested and carried to the police van — Cecil Bernard George. But when he heard these gunshots, LeBlanc radioed, “hold the ambulance.” He thought it was too dangerous for an ambulance to enter the area: “I didn’t want an ambulance pulling into the middle of what essentially was a gunfight in the middle of the street. It would have been hazardous ...” Constable LeBlanc knows he cancelled the ambulance but is uncertain if this transmission was actually relayed on the radio system. He thinks he might have accidentally “clipped” the communication because he did not pause before speaking into the microphone, which was required for the radio system to make a connection.

When Ken Deane testified at his trial,<sup>9</sup> he claimed he saw two muzzle flashes coming from the bush area. Because these alleged muzzle flashes were close in sequence, Deane believed they were from one gun. Acting Sergeant Deane could not identify a human form of a person. He claimed that all he saw were two distinct muzzle flashes pointing toward OPP officers. He considered this a threat of firearms to officers in the Crowd Management Unit.

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<sup>9</sup> Ken Deane died in a car accident shortly before he was scheduled to testify at the Ipperwash Public Inquiry. He testified before Fraser J. in April 1997 and was convicted of criminal negligence causing the death of Dudley George.



Deane shot at these muzzle flashes. He then moved forward approximately ten metres and saw a person leave the general area of the muzzle flashes. He saw a person walk onto the roadway with what he perceived was a firearm, and thought this person was possibly responsible for the muzzle flashes. The man who walked onto the roadway was Dudley George.

Ken Deane claimed Dudley George shouldered a rifle in a half-crouched position and scanned the police officers. Deane claimed the gun was pointed in the direction of at least three OPP officers, on the inland side of East Parkway Drive, and that Mr. George's right hand was "up at the trigger group." Ken Deane testified that he believed Dudley George was "a millisecond away from shooting one of [the] officers." Acting Sergeant Deane discharged his semi-automatic gun. He fired three shots in rapid succession at Dudley George.

Ken Deane saw Dudley George falter, fall on one knee, spin to his right, and then spin to his left. He claimed Mr. George threw his rifle down in the area. Deane saw First Nations people come to Dudley's rescue and assist him back to the park. Constable Irvine, a member of the Sierra team, also saw First Nations people carry "a body" into the park. He thought this person was seriously injured and in need of immediate medical attention.

Acting Sergeant Deane radioed for an ambulance after he fired his gun at Dudley George. Acting Staff Sergeant Skinner instructed Constable Zupancic to accompany Ted Slomer to the site in the Suburban, which the medic had prepared as a makeshift ambulance. But shortly after these instructions, Ken Deane radioed to disregard the ambulance request — the injured individual had returned to the park. Constable Zupancic and Ted Slomer were not deployed in the makeshift ambulance to provide first aid to the Aboriginal man shot by the police.

Inspector Carson heard the gunshots on the radio in the TOC with the almost instantaneous transmission: "Native shot — ran into park." Carson inscribed those words in his notebook, closed his book abruptly, and threw it onto the dash of the TOC vehicle. Inspector Carson knew the police had "just lost control of this event." As he said at the hearings, the OPP had been

*[t]rying to contain this situation, wait for the injunction the next morning, try to get some negotiations going, [all] were all going to be for not because at this point in time now with shots fired and by the sounds of it, somebody being struck. This whole event was going to take an absolute right turn, and this was a moment in time when this whole event changes ... [T]he aggression had generally been with the military and there was an issue with the park. But for the most part, other than the minor altercation we had on September 4,*

*from here on, my view was the attention would be turned towards the police ... (emphasis added)*

In about one and a quarter hours, Inspector Carson learned that this First Nations person, Dudley George, had been fatally shot.

Sergeant George Hebblethwaite, second in command of the CMU, was standing nearby when the shots were fired at Dudley George. After watching the bus move in reverse toward the park, Hebblethwaite “saw a figure, a man, at the elbow of the road fall to his right knee in a spinning motion.” At no time did Sergeant Hebblethwaite see a firearm carried by Dudley George; in fact, at no time during the entire confrontation did Sergeant Hebblethwaite see any Aboriginal occupier carry a firearm. As Hebblethwaite later inscribed in his notebook, the man on the road — Dudley George — “appeared to be holding a stick or a pole and my first thought was that he had been shot, but he seemed to stumble away back towards the park fence line, and I believed he only stumbled in haste to retreat.” Sergeant Hebblethwaite later learned this man was Dudley George and that he had died from the shots discharged by Acting Sergeant Deane.

Ken Deane claimed that Dudley George’s gun fell to the ground after he shot him. Deane testified that he did not attempt to retrieve the rifle. The TRU officer claimed the rifle was on the ground at the intersection of Army Camp Road and East Parkway Drive, yet he left the rifle on the road. Nor did Deane attempt to tell TRU Constables Klym and Beauchesne, members of his Alpha team, that they were approximately twenty metres from the rifle allegedly carried and dropped by Mr. George, the man he just shot.

Based on the testimony at the Inquiry, there is no evidence to depart from Justice Fraser’s finding in the trial of Ken Deane in 1997 that Mr. Deane’s assertion, that Dudley threw his firearm on the ground, lacked credibility.

I would have expected Acting Sergeant Deane to retrieve the rifle allegedly in Dudley George’s possession to ensure other occupiers did not threaten the OPP officers with this gun. Nor did Deane say over the police communication system that a rifle was in the area that could constitute a threat to the OPP officers. Deane simply radioed Acting Staff Sergeant Skinner that an individual was down and an ambulance was needed. Ken Deane did not recall transmitting to TOC that a man with a long arm was trying to shoot at the police officers. Acting Sergeant Deane claimed he “did not think of the rifle at that time.”

Constable Irvine, a TRU officer on the Sierra team, did not see any muzzle flashes nor any First Nations person with firearms during the entire confrontation that night. One of Constable Irvine’s responsibilities as a TRU sniper was to ensure there was no threat of firearms in the area. Constable Irvine was scanning



the middle section of the sandy parking lot and the park that night, and at no time did he see firearms in the possession of the occupiers. Nor does Constable Beauchesne recall Ken Deane telling him that evening that he saw muzzle flashes. And Acting Staff Sergeant Skinner also does not remember Ken Deane mentioning muzzle flashes when he returned to TOC to inform him that he had shot an Aboriginal occupier.

After analyzing the evidence very carefully, I am confident that Dudley George did not have a gun on the night of September 6. Ken Deane's assertion that Dudley threw his rifle on the ground is implausible. Deane claimed that he did not retrieve the gun because he "did not think of the rifle at that time." Clearly, if Dudley George had a gun and threw it to the ground after he was shot, Deane would have considered it a threat to the other OPP officers. Another First Nations person could have retrieved the gun. Also, if the gun was on the ground, one would have thought Ken Deane would want the gun as evidence that a weapon had been in the possession of the First Nations occupiers that night. Dudley George did not have a rifle or firearm in the confrontation with the police on the night of September 6, 1995.

#### **14.18 First Nations People Run to Dudley George after He is Shot**

First Nations occupiers heard gunshots as the bus and car began to reverse toward the park. Gabriel Doxtator saw a police officer holding an assault rifle and saw muzzle fire from that direction. Bullets began to fly and Gabriel ran into the park. The Aboriginal people were in a state of panic. Michael Cloud described his high state of anxiety: "[A]nother bullet went right by my ear ... literally right through my hair ... I was terrified." He ran back to the park as fast as he could. "There was just a hell of a lot of shooting." He heard the garbage bin and trees being hit by bullets. Michael Cloud knew a shot had hit a body. He said, "There was no mistaking it ... I've hunted deer all my life. I know what it sounds like when ... something gets hit with a bullet."

After the gunfire subsided, Gabriel Doxtator ran toward the sandy parking lot "to make sure everyone was all right." From inside the park, Gabriel Doxtator saw Dudley George, who appeared to be injured, stumble toward the park. Dudley held his chest and said, "I think I'm hit." He saw Dudley fall to the ground.

David George noticed someone lying on the ground out of the corner of his eye — it was Dudley. He saw blood on Dudley's chest near the area of his right shoulder. Dudley's eyes were glazed, and he was motionless.

Fourteen-year-old J.T. Cousins also saw Dudley fall to the ground at the edge of the paved road at the intersection of East Parkway Drive and Army Camp

Road. Dudley struggled to rise. J.T. Cousins had hidden behind a cement pillar when he heard the gunshots. The bullets ricocheted off the cement pillar. J.T. thought, “[W]e’re all going to be shot ... they’re going to kill us all.” As J.T. approached Dudley, he saw “Dudley’s blood all over the place.”

From inside the school bus, Leland White also saw Dudley lying on the ground with blood on his shirt. Leland was on his knees in the bus, looking out the rear emergency door window. Fifteen-year-old Wesley George also witnessed Dudley fall to his knees and to the ground and saw his blood-soaked shirt.

Jeremiah George, who had headed to the beach before the confrontation, heard yelling, then quiet for a short while, followed by a few shots, and then a “lot of shots.” He thought the last shots might have been from an automatic weapon. He was terrified because he was by himself and his “brothers were in the area where the shots were being fired. So after I heard the shots, the only thing I could do was try and find cover.”

This was a terrifying sight for these teenagers and all the First Nations people at the park, several of whom were immobilized by their state of shock. OPP officers were also extremely surprised and upset that a First Nations person had been shot.

Elwood George was about fifteen to twenty feet from Dudley when he heard Dudley say he had been hit. Elwood ran to Dudley, put his arm around him, and tried to help him move toward the park fence. Dudley George took two or three steps, became limp, fell to the ground, and collapsed. Elwood George yelled for help. David George and other First Nations people ran to assist.

Stewart George helped move Dudley inside the park boundaries. The First Nations witnesses were adamant that they did not see any firearms in the vicinity of Dudley George. All Marlin Simon, Stewart George, and the other First Nations people saw in the area were broken bats, broken shields, and helmets. As Stewart George said, none of the occupiers had firearms in the park. This was intended to be a “peaceful occupation” and “no firearms” was “one of the things that was agreed upon.”

I accept the evidence of the First Nations people that the occupiers did not have guns at the park during the confrontation with the police. This was corroborated by the many CMU and TRU officers who testified at the Inquiry other than Ken Deane who claimed Dudley George carried a rifle and Constable Cossitt who claimed a gun was in Warren George’s car. Other OPP officers at the site of the confrontation on the night of September 6 did not see any firearms in the possession of the First Nations occupiers.

Many First Nations occupiers were paralyzed with fear when they saw Dudley on the ground. Marlin Simon was “just kind of in shock watching what was going



on.” Stacey George sat in the sand and prayed for Dudley. Stacey George saw a group of people pick up Dudley and carry him inside the park.

David George talked to Dudley in the park — “Dudley, you got to stay awake. Don’t go to sleep ... try and fight it.” Blood spread across Dudley’s chest, and he did not respond. The “OPP WHO” car pulled up, driven by Robert Isaac. J.T. Cousins climbed into the back seat of the car, and other First Nations people lifted Dudley into the vehicle. They drove towards the army camp. This was the last time David George saw his cousin Dudley.

There was a commotion as the Aboriginal people ran around to see if anyone else had been shot or seriously wounded.

The First Nations people could not understand and were deeply disturbed that the OPP did not offer first aid or an ambulance for Dudley George. Dale Plain and the other occupiers were “angry” that an ambulance did not arrive to “help Dudley”:

I was angry because the police done what they done, shooting at us unarmed people just trying to protect our grandfathers’ graves and grandmothers ... [a]nd uncles and aunties and little babies buried there.

David George called 911 and told the operator, “Somebody got shot.” The operator asked him to identify the wounded person, which he did. The operator then asked who had shot Dudley, and David responded, “Your guys shot him.” One of the occupiers pulled the phone from David George’s hands and the call ended.

John Knight was the dispatcher at the Wallaceburg Central Ambulance Communication Centre that night. He testified that there was a 911 call for an ambulance at 9780 Army Camp Road, the park store. At the OPP’s request, the police were notified of this call. Mr. Knight testified that the police “didn’t want us to respond” to the call from the store and, consequently, an ambulance was not dispatched at that time to the park store at Ipperwash Park.

Dudley George was transported in a car by his brother and sister to Strathroy Hospital. This harrowing experience is described in detail in Chapter 18.

First Nations people sat by the fire at the park store, “waiting for a word about Dudley.” The occupiers could not believe what had happened. They used the park phone to try to find out where Dudley was. Later that night one of Dudley’s relatives gave them the devastating news — Dudley George was dead. The uncontrollable tears of the First Nations people flowed in Ipperwash Park.<sup>10</sup>

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<sup>10</sup> The impact of his death and the confrontation with the police as described by First Nations witnesses is described in Chapter 20.

### 14.19 Officers Ordered to Return to TOC after Dudley is Shot

After the bus and car retreated toward the park, Staff Sergeant Lacroix ordered a cease fire. He instructed each squad leader in the CMU to conduct a casualty count, convinced he had “lost officers.” All CMU members were accounted for. Staff Sergeant Lacroix was in a state of disbelief and asked the squad leaders to repeat the count:

I asked them to account for everybody; they say they’ve got everybody. I have a hard time believing that. I tell them to do it again, just because of the amount of violence, the amount of action that had taken place ... the bus, the car, the bus again, the gunfire. I didn’t believe it myself.

Staff Sergeant Lacroix asked the TRU team to check the ditches, fearful that there were casualties of either officers or occupiers. There were no casualties amongst the OPP, nor were there broken bones or serious injuries. Staff Sergeant Lacroix radioed Acting Sergeant Skinner:

We took gunfire from a car. A bus tried to run us over. We returned fire. We have no casualties that I can count for, everybody seems to be accounted for.

Inspector Carson instructed the CMU to return to the TOC site. The TRU team covered the CMU officers who, in box formation, turned around and at “high trot” returned to TOC at the MNR parking lot.

The First Nations occupiers watched the CMU officers depart from the area. As the CMU retreated down East Parkway Drive, Stacey George, an Aboriginal man, yelled at the police that they had shot an unarmed man. Constable Irvine, a member of the TRU Sierra team, walked backwards down the road, keeping an eye on the occupiers to ensure they did not pursue the officers. He heard someone shout “Murderers,” which confirmed for him that a person had been very seriously injured. That person — Dudley George — died that night.

### 14.20 CMU and TRU Return to TOC

Staff Sergeant Lacroix addressed his officers in the Crowd Management Unit on their return to TOC. The Staff Sergeant asked each officer who had fired his weapon to step forward as there would be a Special Investigations Unit (SIU) investigation. Three CMU officers — Sergeant Hebblethwaite, Constable Sharpe, and Constable York — had fired their guns, as well as Staff Sergeant Lacroix.



Staff Sergeant Lacroix told Inspector Carson that he and three ERT officers had discharged their firearms. He told Carson the CMU had fired a number of rounds into the school bus and car, and someone likely hit had retreated to the park. It was Inspector Carson's understanding at the time that occupants in the car and bus had fired upon the police.

The TRU officers reported to Acting Staff Sergeant Skinner when they returned to TOC. Three TRU officers on the Alpha team — Ken Deane, Mark Beauchesne, and Bill Klym — reported that they had discharged their guns. Constables Beauchesne and Klym had fired at the car in the sandy parking lot.

Acting Sergeant Deane told Acting Staff Sergeant Skinner that he had seen a person emerge from the sandy berms behind the parking lot, cross the road-way by the intersection, and scan the CMU with a long gun. Deane reported that he had fired three rounds and that he saw the person stagger. Deane had radioed for an ambulance but then saw some occupiers carry the injured person into the park. Aside from Ken Deane, no other TRU officers who testified reported seeing occupiers with guns. Nor did any TRU officer report that they saw muzzle flashes from a gun carried by an Aboriginal occupier when they returned to TOC. Acting Staff Sergeant Skinner does not recall any mention by Deane of muzzle flashes at TOC that evening.

This was the first and only time Acting Staff Sergeant Skinner experienced use of lethal force by one of his team members.

Acting Staff Sergeant Skinner informed John Carson that three TRU officers had discharged their firearms — Constable Klym, Constable Beauchesne, and Acting Sergeant Deane. Acting Staff Sergeant Skinner did not seize at that time the weapons discharged by these three TRU officers, as they had no weapons to replace them and the TRU team was still operational. It is OPP policy that in an operational situation, weapons are not taken from the officers unless there are replacements. The guns discharged by the CMU officers were also not seized at that time. There were not an additional seven weapons at TOC that evening.

At the TOC site, Inspector Carson instructed the officers to remove their equipment, go to their hotel rooms, and await further instruction. As I discuss in further detail in Chapter 20, the OPP did not control the scene after the confrontation. Also, the officers did not receive a debriefing of this confrontation with the First Nations people.

Inspector Carson left TOC and returned to the command post at 12:02 a.m. At approximately 12:20 a.m. John Carson learned Dudley George had died from shots discharged from a gun by an OPP officer.

## 14.21 Call between Ovide Mercredi and Mark Wright

At approximately 11:40 p.m., Ovide Mercredi, the National Chief for the Assembly of First Nations, called the OPP Command Post. He told A/D/S/Sgt. Wright he had received a disturbing call from Chief Tom Bressette's wife and that Tom was on his way to the park. Ovide Mercredi had heard there were thirty police cruisers, ambulances, and canine units proceeding to the park. Ovide Mercredi wanted to know the OPP's "intention," and he wanted to speak to the Incident Commander. He told Mark Wright: "I'm very concerned with what you're doing. I'm concerned about people's lives."

When Ovide Mercredi testified at the Inquiry, he explained the purpose of his call to the Incident Commander:

... the conversation was ... to try to determine whether in fact they were moving into the park for the purpose of moving people at night time. And *to try to impress upon them to delay that action until the morning and not to do this in the night time ...*

... my first thought was to try to stop it, I mean, that's why I asked for the Commander, *I wanted to talk to the Commander, I wanted to go to the top of the line of authority and try to persuade that person to reconsider whatever decision was being made*, because it was quite clear in Tom's view, that some decision had been made, and that the police were now moving towards the park ... So I made that call to the command centre, with the hope that I might be able to talk to the senior Commander, and persuade him not to do that at that time. (emphasis added)

It is clear from this conversation that the National Chief was not aware an altercation had taken place between the OPP and the First Nations people and that Dudley George had been shot. Ovide Mercredi asked whether the OPP planned to go into the park and tried to persuade the police not to act precipitously: "What's the rush? Why don't you wait until tomorrow after you've talked to them?"

Ovide Mercredi gave A/D/S/Sgt. Wright excellent advice — communicate with the First Nations occupiers, and do not act precipitously. Unfortunately and tragically, it was too late. The OPP did not contact Ovide Mercredi on September 4 when the park was occupied or at any time before it marched down East Parkway Drive. In fact, the OPP did not rely on any First Nations negotiators or First Nations police to try and open up a dialogue with the Aboriginal



occupiers. As Ovide Mercredi wisely said in his advice to A/D/S/Sgt. Wright, there was no rush for the police to confront the occupiers in the dark on the night of September 6.

A/D/S/Sgt. Wright wanted to know on whose behalf Ovide Mercredi was speaking. He asked if Ovide Mercredi spoke on behalf of Chief Tom Bressette. Ovide Mercredi replied: “I’m the Grand Chief. I’m speaking in that capacity ... I’m concerned about Indian people. I represent them, wherever they may be.” Ovide Mercredi believed the OPP officer was questioning the legitimacy of his representation.

At no time did Mark Wright disclose to the National Chief that there had been a confrontation between the police and the First Nations occupiers, that shots had been fired by the OPP, there had been injuries, and that one Aboriginal person may have been fatally shot.

Ovide Mercredi gave A/D/S/Sgt. Wright his telephone number and said he would “wait for the call” from the Incident Commander. Inspector Carson did not return the call.

As the National Chief for the Assembly of First Nations said:

But that call never came. I waited for that call, that call never came. So, then I went to bed and four o’clock in the morning the phone rings. I pick up the phone and on the other side is [Chief Superintendent] Cole[s] and he proceeds to tell me that there has been a real tragedy in Ipperwash ... [T]he essence of the conversation was there was a death, someone got shot and killed and that there was a few other people injured.

And to this day, Ovide Mercredi as well as many others do not understand why the OPP made the decision to confront the occupiers on September 6 in darkness:

... it doesn’t make sense to me — it didn’t make sense, it makes no sense to me now, that the police would go about doing that work at night time, when danger is increased for them as well ... [I]t makes more sense for me for the police to enter into a dialogue with the individuals, and maintain that dialogue and those open communications than to move in ...

## **14.22 No TRU Transmissions of the Confrontation**

Valuable information on the TRU officers’ observations and transmissions to TOC were not available for me to analyze at the Inquiry. Constable Rick

Zupancic was responsible for recording the TRU communications on the night of September 6.

When Inspector Carson, Acting Staff Sergeant Skinner, and Constable Zupancic were at TOC that night, the vehicle stalled and the power went off momentarily. In order for the TRU communications to reactivate, it was necessary to press the “play” and “record” buttons simultaneously. Unfortunately, Constable Zupancic did not push the “record” button.

After shots were fired and an ambulance was requested, Constable Zupancic was directed to leave TOC and take medic Slomer to the sandy parking lot area. As they proceeded toward the park, they were told an ambulance was not required and to return to the Tactical Operations Centre. It was at this time that Constable Zupancic realized the TRU transmissions were not being recorded. His best estimate is that it was about 11:30 p.m. He told Acting Staff Sergeant Skinner about the malfunctioning of the recording device. This was after the CMU and TRU had returned to the MNR parking lot.

Acting Staff Sergeant Skinner did not examine or listen to the tape to ensure that, in fact, no TRU communications were recorded, nor did he take custody of the tape. The tape remained in Constable Zupancic’s possession.

Some time between 1:00 a.m. and 5:00 a.m. on September 7, Constable Zupancic tried to determine whether some information was captured on the tape but found nothing. Constable Zupancic took possession of the tape and placed it in his locker at the TRU office. Constable Zupancic did not turn over the tape to the SIU until the night before he testified at Ken Deane’s trial in April 1997, over one and a half years after the confrontation at Ipperwash Park. The OPP policy on logger tapes is that anything on tape accompanies the operational report.

Acting Staff Sergeant Skinner did not know how long after the September 6 events Constable Zupancic had listened to the tape.

In my view, it would be good practice if an officer wrote notes during an OPP operation in the event that the recorder malfunctions or for some other reason fails to record the communications between OPP officers. Also, it is inappropriate for an officer responsible for recording the communications to take custody of the tape after the operation. It is fundamental that appropriate procedures be established and enforced by the OPP to ensure that the tapes of a police operation are preserved in a safe location for an indefinite period of time. This promotes the twin objectives of transparency and accountability in police operations.

Note-taking by officers of the events at Ipperwash was also in need of improvement. The OPP officers often did not complete their notes until many hours had lapsed. At times, they did not write their notes before they went off duty. For example, Constable Beauchesne did not write his notes of the confrontation until the evening of September 7, 1995. Similarly, Kent Skinner’s notes of



September 6, 1995, were not recorded until approximately twelve hours after the events.

It is essential that officers record events in written form as soon as possible. If it is not feasible to make a written record of events at the time, officers should ensure that they are completed before they go off duty. OPP Commissioner Gwen Boniface agreed that the longer the information sits, the greater the risk of contamination: “[t]he fresher the information the better.” This is fundamental, both in terms of transparency and accountability in OPP operations. I understand that the OPP have made changes in this regard since Ipperwash. I commend these and other changes that will promote the twin objectives of transparency and accountability in OPP operations.

### **14.23 An Aboriginal Protest is Different from a Soccer Crowd: Lack of Understanding of Aboriginal History and Culture**

CMU Commander Staff Sergeant Lacroix was surprised at the occupiers’ response to the “punchout” that night. He believed the occupiers would simply “run away” and “when that didn’t happen it was a surprise” — they “actually ended up colliding full speed.”

Staff Sergeant Lacroix had not been trained and did not appreciate that a First Nations protest is different than other crowds or groups. As he acknowledged at the hearings, the fact that it was Aboriginal people “from one community,” many of whom were “related” and who had a “common purpose, a common belief, an emotional belief,” had an effect on the reaction of “that crowd.” He agreed that “the tactics did not have the effect on the Aboriginal community that they do on coal strikers in England ... or a soccer crowd” or even a crowd at Nathan Philips Square in Toronto. The tactics “sure didn’t work this night.”

The Aboriginal people at Ipperwash Park were a different crowd. As Staff Sergeant Lacroix later learned, the First Nations occupiers “firmly believed that they were on sacred ground, they were of one mind, they were committed, they were family,” and this crowd “reacted very explosively very quickly.” It was only in hindsight that Wade Lacroix understood some of the “precipitating factors” were “historical,” “political,” and “racial.” Staff Sergeant Lacroix had no idea the occupiers thought the CMU would evict them from the park that night.

It is important to understand that the context of an Aboriginal protest and occupation is fundamentally different from non-Aboriginal protests and occupations — the psychology, the composition of the people, and their behaviour. Aboriginal people will likely respond differently to police actions and tactics than non-Aboriginal occupiers. For example, a group of soccer fans may disperse when confronted by police. Aboriginal people, who historically have considered

the site of their protest to be their land or to contain sacred burial grounds, may react differently.

As I discuss in detail in Part II of the report,<sup>11</sup> Aboriginal protests and occupations require unique police resources, strategies, and responses. The objectives of the police during Aboriginal protests and occupations should be to minimize the potential for violence and to facilitate constitutionally protected rights, including treaty and Aboriginal rights and the right to peaceful assembly. It is essential that police officers receive training in Aboriginal history, culture, and law. It is also very important that First Nations police services be involved in First Nations protests and occupations.

OPP officers at Ipperwash did not have an understanding of the fundamental differences between Aboriginal and non-Aboriginal protests and occupations. The CMU Commander and his officers had little understanding of Aboriginal history and culture or that the behaviour and reactions to OPP tactics would not be the same as with a soccer crowd, hockey fans, or other non-Aboriginal protests or occupations. Marching down East Parkway Drive in riot gear with helmets, shields, batons and guns, approaching the fence of the park a few feet away from the First Nations occupiers, and other intimidating tactics such as shield chatter did not have the desired or expected effect on the Aboriginal occupiers. These police strategies and tactics did not work on the Aboriginal group. An understanding of the history and culture of the First Nations people and the presence of First Nations police services would undoubtedly have helped the OPP understand that the Aboriginal occupiers were not like a soccer crowd. The use of First Nations police services and mediators would have been more effective than the strategies, or what First Nations people described as “scare tactics,” employed by the CMU on September 6. This was another significant failing at Ipperwash.

Staff Sergeant Wade Lacroix learned Dudley George had died in the confrontation on the morning of September 7. He was convinced the man in the car (Warren George) was dead and was shocked to learn Acting Sergeant Ken Deane had shot a First Nations person standing on the road. Staff Sergeant Lacroix believed he might have fatally shot the driver of the car in the altercation with the First Nations people on the night of September 6.

#### **14.24 Responsibility for the Decision to Deploy the CMU and TRU**

John Carson took personal responsibility for the decision to deploy the Crowd Management Unit and the Tactics and Rescue Unit to the sandy parking lot on the night of September 6. He had unverified and inaccurate information about the

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damaged car and other incidents earlier in the evening. He also mistakenly thought there was a fire and vehicles in the sandy parking lot.

Inspector Carson's approach to the occupation, from its inception, was to move slowly — to inform the occupiers they were trespassing on provincial property, to try and negotiate with the occupiers, and to wait for MNR to seek an injunction. This was in conformity with the objectives in Project Maple.

When the Incident Commander left the command post that evening to go to a friend's home for dinner at approximately 7:00 p.m., he believed the situation was stable at Ipperwash Park. Inspector Carson was hopeful the injunction motion in Sarnia the following morning would resolve some of the issues surrounding Ipperwash Park.

But under Inspector Linton's command that night, the situation at the park was perceived to be escalating — Mark Wright's encounter with the First Nations people, the Gerald George/Stewart George incident, the occupiers' preparation of the yellow school bus, the increased vehicular traffic, the movement of women and children out of the park, and the belief that a fire was burning in the sandy parking lot. When John Carson was contacted at his friend's home that evening, he tried to halt what he perceived to be Dale Linton's precipitous decision to call out the TRU team. Inspector Carson immediately returned to the command post, despite Dale Linton's view that this was unnecessary.

When Inspector Carson returned to the command post that evening, "it was chaos ... There was a lot of information, a lot of discussion and a lot of things being shared back and forth." Inspector Carson decided that night to mobilize the CMU and use TRU to observe and provide intelligence, and to cover the CMU.

In my view, the OPP acted with undue haste when it decided to mobilize and deploy the CMU and TRU in darkness on the night of September 6, 1995. The necessary time should have been taken to allow Constable Poole's written statement of his interview with Gerald George to reach the command post. This would have cleared up the confusion and refuted the inaccurate report that the Aboriginal occupiers had beaten a female civilian's car with baseball bats. Time should also have been taken to authenticate the unconfirmed report of Gerald George that there were guns in the park. And time should have been taken to verify whether there was in fact a fire built in the sandy parking lot.

John Carson described the TRU team as the eyes of the Incident Commander. As he said at the hearings, the TRU team keeps the Incident Commander informed and apprised of events on an ongoing basis. But a problem on the night of September 6 was that the TRU Sierra teams had difficulty moving into position "to be the eyes."

Prior to the deployment of the CMU, the Sierra teams were not able to successfully move into position to be “the eyes” on the sandy parking lot. Even when the CMU was initially deployed, one of the officers on the Sierra team alerted the Tactical Operations Centre that Sierra was not in position and did not yet have an “eye” on the park. Yet the CMU officers proceeded to march down East Parkway Drive to the sandy parking lot.

The OPP should have considered other options while it waited for confirmation reports of the Gerald George and the other incidents. For example, cottages in proximity to the park could have been evacuated while the OPP waited to authenticate reports concerning the activities of the occupiers, or to wait until daylight.

In my opinion, the inaccurate and unverified information received by Inspector Carson was responsible in large part for his decision to deploy the CMU and TRU. Had John Carson received better intelligence in the police operation, and had the police had better communications with the occupiers, the decisions made that night in the command post may not have occurred and the tragedy may have been averted.

The First Nations people did not understand that the OPP had no intention of entering Ipperwash Park that night. At no time did the OPP use a bullhorn or post written material outside the park or on the park fence to communicate this message to the occupiers.

There was a perception by the First Nations occupiers of increased police presence on September 6, 1995 in the Ipperwash Park area. The boat surveillance on Lake Huron, and the low-flying helicopter surveillance caused agitation and anxiety amongst the First Nations people. This caused the First Nations people to engage in preparations for the OPP approach — they collected rocks and sticks, gassed up the school bus, and some suggested that women and children leave the park. On the scanner, they overheard the police communicate that they planned to march to the park that evening.

The OPP’s decision to march down East Parkway Drive in darkness on the night of September 6 was precipitous. Based on unauthenticated information, they mobilized and deployed the CMU and TRU teams.

Inspector John Carson was a conscientious and competent Incident Commander at Ipperwash during the September 1995 events. He is a man of integrity who clearly wanted the Aboriginal occupation to be resolved peacefully. But on the night of September 6, 1995, I believe it was a mistake to deploy the CMU and TRU down East Parkway Drive toward the sandy parking lot before the information he had been given, could be verified.



CMU officers, dressed in hard Tac equipment with their helmets and shields, marched shoulder-to-shoulder in formation toward the park. There were thirty-two officers, an eight-man arrest team, two canine teams, and two prisoner vans. Several CMU officers were “nervous” as they marched toward the park in darkness. TRU officers walked ahead of the CMU with assault rifles and semi-automatic pistols, providing cover. The CMU leader yelled commands to his officers as the police marched toward the sandy parking lot. The Aboriginal people were terrified as they saw the officers dressed in “riot gear” marching toward the park. The Aboriginal occupiers were not armed.

The OPP’s plan to have the occupiers leave the sandy parking lot or to remove them if necessary, seemed to work, at least initially. As the CMU advanced to the fence line outside Ipperwash Park, the First Nations people retreated from the sandy parking lot into the provincial park. As the CMU came to a halt, the last few occupiers walked through the turnstiles into Ipperwash Park. Sergeant Hebblethwaite radioed to the Tactical Operations Centre that “the badgers are in the park.” The CMU Incident Commander, Staff Sergeant Lacroix, thought the CMU’s mission was complete.

The OPP’s plan seemed to work, but only momentarily. An Aboriginal man subsequently identified as Cecil Bernard George, whose fear of the police had turned to anger, walked into the sandy parking lot waving a steel pipe. He yelled that the park property was Aboriginal land, and that his grandfather was buried on this land. CMU officers had backed up at this time to Army Camp Road. The CMU Incident Commander yelled “punchout.” CMU officers ran toward Cecil Bernard George and a confrontation ensued between the OPP and the First Nations occupiers. The police fired their guns during the altercation, and Dudley George, a thirty-eight-year-old occupier, was shot and killed.

Deploying the CMU was an offensive not a defensive strategy. It was a show of force. It was designed to clear occupiers or protesters from a particular area. If the strategy does not work, the potential for violence increases. Using the CMU was a calculated risk that was within Inspector Carson’s authority to make. The use of any force must be to ensure public safety. Based on the information that he had, Inspector Carson made a decision to use the CMU to clear the sandy parking lot. In his view, public safety required it. As I have pointed out, the information upon which Inspector Carson made the decision was wrong. If Inspector Carson had the correct information, I believe that he would not have made a decision to deploy the CMU. Inspector Carson should have waited before deploying the CMU until he had received the report of Constable Poole with respect to the incident involving Gerald George. He should have waited until

the TRU Sierra teams were in position and reported back to him on what was happening in the sandy parking lot and the kiosk. He would have learned that there was not a fire in the sandy parking lot. He would have learned how many people, if any, were in the sandy parking lot and whether they had any weapons. He would have had better information upon which to make his decision. One of the problems that he had was that there was not an appropriate intelligence system in place to verify the information about guns that had been provided to him. In my view, Inspector Carson should also have considered using a bull horn to inform the occupiers that the OPP had no intention of entering the park and that the OPP simply wanted them to leave the sandy parking lot and stay out of it.

Moreover, the decision to deploy the CMU and TRU in this way, as a show of force, was not in keeping with the peaceful approach called for in Project Maple and did not adequately contemplate the characteristics of an Aboriginal protest. Further, this level of response to a perceived escalation of activity increased the potential for violence. Given the heightened tension created by this situation, one could have, and in my view should have, contemplated that *any unexpected occurrence* — such as Cecil Bernard George walking out of the park turnstile into the sandy parking lot — might set off a confrontation. This is exactly what happened.

In view of Inspector Carson's years of experience, he should have realized that sending a large number of officers in darkness, with helmets, shields, and guns to confront the First Nations occupiers could have easily erupted and resulted in a confrontation between OPP officers and the occupiers. Inspector Carson thought that he knew the occupiers. He did not believe that they would use violence against the OPP. Except for isolated incidents involving the military, the occupiers had not used violence. And until September 4 and 5, the occupiers had not resorted to violence against the OPP. In making the decision to deploy the CMU, Inspector Carson relied too heavily on information that was inaccurate and unverified. He also misjudged and did not anticipate the reaction of the occupiers to the excessive force used to arrest Cecil Bernard George.

As I have already noted, this was the first time that the CMU and TRU had been deployed together in this manner to address an Aboriginal occupation, and, in my view, the OPP officers had insufficient experience with this approach. In addition, as we have seen, they had little and sometimes conflicting information about what they were about to confront. Acting Sergeant Deane and Inspector Carson are not the only ones who need to take some responsibility for what occurred. Notwithstanding the many progressive reforms undertaken by the OPP in recent years in relation to policing Aboriginal occupations, I believe the OPP, as an institution, also needs to be accountable and take some responsibility for the



tragedy that resulted on September 6, 1995. The OPP should have ensured that Inspector Carson had a robust intelligence capability to help him assess the situation quickly and accurately.

## SEPTEMBER 6, 1995 — PURSUIT AND ARREST OF MARCIA SIMON

Shortly after 11:00 p.m. on September 6, Marcia Simon decided to go to the park to check on her sons, Kevin and Marlin. As she left the barracks, she noticed that Pierre George's white car blocked one of the gates to the army camp.

Accompanied by her mother, Melva George, Marcia Simon drove on the interior access road within the camp that runs parallel to Army Camp Road. She could see a stream of vehicle lights coming toward her. Someone in the lead vehicle yelled at her to clear the way and told her not to proceed to the park. Marcia Simon described the "man's voice" as "very frightening." She said, "I knew something awful had happened from the sound of his voice and I was all the more worried about my sons."

Her son Marlin, visibly "ashen," approached in a car and told Marcia Simon "the cops have shot up everything." Despite concerns about Kevin, Marcia Simon had her elderly mother with her, so she turned around and drove back to the gate of the army camp. Pierre George's car was no longer parked near the gate.

Marcia Simon noticed her cousin Roderick George walking in a dazed state near the gate. He told Marcia that his son Nicholas Cottrelle, who was huddled in the back of his car, had a "hole" in him.<sup>1</sup> Marcia Simon immediately returned to her car, "determined to go to the nearest payphone and call for ambulances for whoever was shot." She was very worried that her younger son Kevin was "also shot and lying somewhere."

At about this time, Checkpoint "D" was moved from its location on Army Camp Road north of the built-up area, to a new location on Highway 21 west of Army Camp Road in the direction of Kettle Point. The officers who had been at the intersection of Highway 21 and Army Camp Road were also instructed to leave their location after shots were heard. They too headed toward the new location of Checkpoint "D."

As Marcia Simon, with her mother in the car, approached the intersection of Army Camp Road and Highway 21, there was no barricade or other impediment blocking traffic. Although at least one cruiser remained at the intersection, there was no indication that vehicles should stop for the officers. Marcia Simon made a left turn out of the army camp onto Army Camp Road, in the direction of the

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<sup>1</sup> Roderick George later learned that Nicholas had not in fact been shot. He had been wounded by a piece of glass.



highway. Ms. Simon claimed that at Highway 21 she stopped, signalled, and made a left-hand turn with the intention of driving to the nearest payphone at MacPherson's Restaurant in Northville, less than five minutes away. Northville is approximately four kilometres from Army Camp Road on Highway 21 toward Grand Bend. Marcia Simon was intent on driving the speed limit on Highway 21, as she did not want to give the police an excuse to either follow or stop her vehicle.

Constable Lorch and his partner were in their cruiser on Army Camp Road heading toward Highway 21 at approximately 11:10 p.m. They saw Marcia Simon's car ahead of them. They saw it pull around a vehicle that had been stopped by officers at the intersection and turn left onto Highway 21. The officers followed the car. Constable Lorch was planning to pull the vehicle over and identify the occupants, because he thought the vehicle had come from the location where the shooting had occurred.

Constables Gransden and Dougan were also in their cruiser on Highway 21, heading to the new location for Checkpoint "D," when they saw the beginning of a vehicle pursuit at the intersection of Army Camp Road and Highway 21. They turned their cruiser around to assist in the pursuit. Although Constable Gransden noticed the vehicle failed to stop for the stop sign, the failure to stop "wasn't in [his] thoughts" that night; both he and Constable Dougan believed that the car was leaving the scene of a shooting, and might be transporting an accused or a witness. Constable Gransden was concerned the occupants of the car had weapons.

Constable Lorch and his partner activated their emergency lights. They radioed the command post that they were pursuing a vehicle. They were instructed to continue following the car, but to turn off their lights. Constable Lorch estimated that the cruiser's lights were activated for about half the trip between Army Camp Road and MacPherson's.

It was not until she was approximately two kilometres past the army camp gate that Marcia Simon realized there were two police cars behind her with their lights flashing. One cruiser pulled up parallel to her car and then followed her. Ms. Simon, with her "terrified mother beside" her, "was puzzled as to why [she] was even being pursued." She was undecided whether to stop and seek the help of the police for the Aboriginal people who had been shot and injured at the park. Ms. Simon explained at the hearings why she decided to continue driving to the payphone in Northville:

... I kept on going. I had mixed feelings about whether to turn to them for help since they had just shot up our people. And they should have known enough to get help if they had done that. And it didn't appear that help was forthcoming. I was fearful they wanted to stop me and shoot me as well because there was no reason to stop me.

Constable Dougan acknowledged that if the lights of the police car were deactivated, “that would confuse the driver.” In my view, the deactivation of the cruiser’s lights sent a confusing signal to Marcia Simon with respect to whether the OPP officers wanted her to pull over.

Constable Lorch’s partner radioed Lima 2 at the Tactical Operations Centre (TOC) to report the car’s license plate number, but did not receive any information back from Lima 2 about the car or its occupants. While in pursuit, the police officers did not make any inquiries about whether a car matching the description of the one they were following had been involved in the altercation outside Ipperwash Park.

Marcia Simon drove at approximately 75–80 kilometres per hour, at or below the speed limit. Constable Lorch agreed that Marcia Simon was not driving in a dangerous or erratic manner, and that apart from not pulling over for police officers, she appeared to be following the rules of the road.

### **15.1 Arrival at Payphone in Northville and the Arrest of Marcia Simon**

Marcia Simon turned into the parking lot of MacPherson’s Restaurant in Northville. She ran to the payphone that was attached to the outside wall of the restaurant and dialled “0.”

The two police cruisers pulled in after her and parked at an angle to the driver’s side of the vehicle, with their headlights illuminating the scene. Constable Lorch went around to the front of Ms. Simon’s car. As he advanced, Constable Lorch yelled, “Police, don’t move.” He was holding a rifle pointed at Marcia Simon. He ordered: “[S]how us your hands, stop moving, put down the phone.” Constables Gransden and Dougan crouched behind their cruiser in a defensive position with their guns pointed at Marcia Simon. Constable Gransden also instructed Ms. Simon to “show her hands.”

In the background of the audio recording of Marcia Simon’s call to the operator, Constable Lorch can be heard yelling: “Don’t make a move, lady.” Marcia Simon replies, “I’m just talking on the phone, get the gun out of here.” Marcia Simon told the police she was trying to get “ambulances for our people that had been shot.” She stated at the hearings, “I was worried about my son ... we needed medical help.” Constable Dougan heard her say that someone on the “base” had been shot and needed an ambulance, and they would not ask the police for help because the police had never helped before.

After Marcia Simon explained that she was phoning for an ambulance, Constable Lorch heard over the radio that an ambulance had been summoned. He testified that he told her that an ambulance had been called and instructed



her to step away from the phone. The officers could not see both her hands because Marcia Simon had her back to them throughout the exchange.

The police officers advanced with guns pointed at Marcia Simon and her elderly mother Melva George. Ms. Simon said at the hearings:

I couldn't believe that I had shotguns levelled at me for trying to call for medical help ... I turned my back to them and offered them the back of my head. If there were going to shoot me, do it in the back of my head.

Constable Gransden moved toward the telephone, pointing his pistol at the phone booth. He approached Marcia Simon, "grabbed a hold of her" jacket, and moved her away from the phone. Constable Lorch saw Constable Gransden struggle with her and went to assist. In the audio recording of the call to the operator, Constable Lorch can be heard yelling, "[G]et on the ground."

Marcia Simon testified that the phone was violently jerked from her. She was pushed onto the hood of her car and then to the ground, and her glasses were knocked onto the gravel parking lot. She could hear her mother screaming, trying to tell the police that her daughter had recently had a bone graft on her wrist, but the officers paid no attention.

Once Marcia Simon was on the ground, the police handcuffed her behind her back. The officers conducted a search for weapons. No weapons were found. Constable Lorch testified that he told her that she was under arrest for failing to stop for police. Marcia Simon claims that she was never advised of the reason for her arrest.

Once she was in an upright position, Marcia Simon saw her mother, distraught that the police were pointing their guns and yelling at her:

I was aware of [my mother] right down on the ground trying to pray. She had her medicines with her and they wouldn't allow her to use them and they had shotguns levelled right at her head, yelling at her to put her hands in the air, and she was pleading that she couldn't because she had arthritis.

And I thought they were going to blow her away, and I pleaded with them. I said, "Leave her alone. She's been just riding with me. She didn't do anything wrong." I asked them if that's how they were trained to treat old, grey-haired widows, and they seemed to calm down a little. They couldn't answer that question.

Consistent with Marcia Simon's account, the audio recording of the telephone call to the operator captures Marcia Simon screaming: "Leave her alone."

Constable Dougan agreed in his testimony that long guns were pointed at both the driver and the passenger.

The operator contacted the ambulance, gave them the telephone number from the payphone, and reported the following:

OPERATOR: The lady had called me and she said that she needed an ambulance cause there were people that were shot, and it was the police that were shooting at them.

After Constable Lorch spoke to Melva George, it occurred to him that the conversation on the payphone might have been taped. He telephoned the operator, who put him through to a police sergeant at Sarnia 911 Dispatch. Constable Lorch said there had been an incident and that a call had been made from the payphone a short time ago. He requested that the tape of the call be “set aside” and was advised that it would be.

There was inconsistency between the evidence of the police and Ms. Simon regarding the reading of her rights and her access to legal counsel. Constable Lorch testified that he read Marcia Simon her right to counsel from a card, that she said she wished to contact a lawyer, and that Constable Lorch advised her that she could make the call from the police detachment where she would have privacy to speak with legal counsel. But Marcia Simon denies that Constable Lorch read her her rights or told her that she could contact a lawyer from the OPP Detachment.

Marcia Simon told her mother to call the hosts of a radio show on Aboriginal issues from the University of Western Ontario to notify them of this incident. She also asked Melva George to contact her department head at school to arrange for a supply teacher for her students.

Marcia Simon was placed in the back of Constables Gransden and Dougan’s police cruiser.

The OPP officers were aware that Marcia Simon was trying to contact an ambulance for someone who had been shot. Yet they did not consider whether, in light of this explanation for her behaviour, it was appropriate to continue the arrest. None of the OPP officers sought further information from her with respect to the location of possibly injured parties to ensure that the medical needs of these people were addressed.

With Marcia Simon and Melva George in their police cruiser, Constables Gransden and Dougan drove to Ipperwash Road and Highway 21 for a transfer to the prisoner van. Constable Denis Leblanc arrived in the prisoner van at Ipperwash Road and Highway 21 at 11:55 p.m. Constable Gransden informed him that Marcia Simon had been placed under arrest for failing to stop for police and had been read her rights. Constable Leblanc was to take her to the OPP Forest Detachment. Marcia Simon was placed in the back of the prisoner van in handcuffs.



Constables Gransden and Dougan then drove Melva George to her home on the Kettle Point Reserve.

The prisoner van with Marcia Simon arrived at the OPP Forest Detachment. From discussion that she overheard in the garage at the OPP Detachment, Marcia Simon learned that someone had been shot and was in critical condition.

Marcia Simon testified that in the garage an officer hit her on the shoulder, angry that she was wearing a military jacket. She explained to the OPP officer that a number of uniforms had been left in the army barracks after the military police left Camp Ipperwash that summer. Constable Leblanc testified at the hearings that he simply told Marcia Simon that it was an offence to be wearing the jacket, but denied that he was angry. Constable Leblanc told Ms. Simon that he needed the military jacket. Marcia Simon was ordered to remove the jacket, her socks, and shoes.

The police took mug shots of Marcia Simon. She was placed in a cell and spent several hours in custody at the Forest Detachment. She wanted to contact her cousin Ron George, a lawyer. Marcia Simon testified that when she was arrested, she was not given the opportunity to make a telephone call or contact a lawyer.

In the early morning hours of September 7 when someone in the police detachment came to her cell to check on her, Marcia Simon complained that the police had not given her the opportunity to make a telephone call to legal counsel.

Marcia Simon thought that it may have been at 2:30 a.m. that she was finally permitted to contact a lawyer and exercise her legal rights. She reached Ron George, who told her that Dudley had been shot and had died. Ron George assured her that her son Kevin was not one of the injured people who had been transported to hospital. Marcia Simon wanted to know if criminal charges had been laid against her.

When A/D/S/Sgt. Wright learned that there was a woman in custody as a result of an earlier pursuit, he instructed that she be released immediately and unconditionally. He thought the Forest Detachment was a “dangerous place” to be and he did not want a civilian under arrest. He knew who Marcia Simon was, the reason for her arrest, and he believed that the OPP could “summons” Ms. Simon later if the police deemed it appropriate.

In the early morning hours of September 7, Marcia Simon was transported in an OPP cruiser to Indian Hills Golf Course where she was turned over to two Kettle Point police officers, Chief Miles Bressette and Constable Wally Kaczanowski. The officers drove her to her mother’s home at Kettle Point.

On the day of her release from custody, Marcia Simon’s brother took photographs of the injuries she had sustained from her encounter with the OPP. She had bruises on her arm, and the wrist on which she had previously had a bone graft was sore. She also had pain in her groin.

Physically and emotionally, Marcia Simon had difficulty returning to her teaching position in London. Her students learned through the media that she

had been in jail, had sustained some bruising, and that a member of her community had died from gunshot wounds. Although her students wanted to discuss the events of September 6, she was instructed by her department head to avoid such exchanges. Marcia Simon said she was denied counselling through the school, which is supposed to be offered for traumatic events. Ms. Simon found it difficult to work in what she perceived to be a “non-supportive atmosphere.” She resigned from her job at the end of the academic year.

Marcia Simon was critical of the police for several reasons. The physical force exerted on her by the OPP when she used a payphone to call ambulances to the park for the injured was inappropriate and excessive. And to this day, she does not understand the reason the police arrested her. In her view, the lack of respect shown by the police and their mistreatment of her elderly mother was inexcusable. Marcia Simon said Melva George would “relive” the events of September 6, 1995: “[S]he would break down and cry that they were going to shoot her.” Marcia Simon was also critical of the police for not giving her an opportunity to contact a lawyer within a reasonable time after her arrest.

The emotional impact of this event on Melva George was confirmed by her niece Bonnie Bressette, who helped care for Melva George in her final years. As Bonnie Bressette said at the hearings, her seventy-year-old aunt

... told me, “I thought they were going to kill me that night at Northville, the night Dudley died” ...

And I spent a lot of time with her until she left us, and left this world, and so many times, it must have been like it gets with me and probably other people, it comes back when you least expect it, the fear ... [T]hat woman carried that fear right until she left, and I seen it, because even when I was no longer caregiver, I used to go up and sit with her. But that’s what she had, this fear. She thought she was going to be shot that night because she had arthritis, and she couldn’t put up her hands when they ordered her to put up her hands ... that fear would come back quite often with her. And when you least expect it, you wouldn’t even be talking about Stony Point, and it would come up.

The events of September 6 had a significant and lasting impact on First Nations people. Like many members of her community, Marcia Simon is fearful of police officers:

When I see policemen coming, I really have a difficult time with that and I’m working on it ... I just had a session last night with my counsellor to help me, this many years later, where I am undergoing counselling to try to cope and I’m getting better.



Marcia Simon also had difficulty going to the Town of Forest because of the painful memories. She said at the hearings: “[I]t was a long time before I felt safe enough to even come back into the town of Forest.” Marcia Simon said it was only several years later, after receiving therapy, that she could “come into Forest without feeling terrorized ... It’s taking time.”

Ms. Simon would have liked an apology from the police for the treatment of her and her mother on the evening of September 6. She thinks an apology may have helped both her and her mother to recover from this traumatic incident. Ms. Simon was concerned about the repercussions of this event on her elderly mother: “I would have liked to have seen something happen to help her, to reassure her that there had been some kind of mistake, that she shouldn’t have been used that way.”

But as Marcia Simon said, even if the OPP offered an apology now, “it’s too late” because Melva George “passed on in November of 2000.”

Inspector Carson testified that it was appropriate to treat the incident with Marcia Simon and Melva George as a high-risk takedown. Shots had just been fired, and he thought that they had failed to stop at a checkpoint. The officers had pursued them and attempted to get them to stop, but they did not comply. The officers thought there was a possibility that the occupants of the vehicle might have firearms, and it might be dangerous. In his opinion, that justified the officers having their guns drawn at Marcia Simon and her mother Melva George.

But Inspector Carson agreed that if after a high-risk takedown: (1) the officers find no weapons, (2) they learn that the people are simply trying to call an ambulance, and (3) there is no other evidence to suggest that these people might have been involved in the shooting, it “makes sense” that the officers would release these people “on the spot.” In such a situation, it would be inappropriate not to have done so.

In my view, once the police officers became aware that Marcia Simon was trying to contact an ambulance, that she and her mother were highly distressed that Aboriginal people had been shot or injured in the area of Ipperwash Park, and that the two women were not armed or dangerous, the OPP should have released Ms. Simon. The police could have reassured Marcia Simon and her mother Melva George that ambulances would be sent to assist the Aboriginal people who were injured, and that these people would receive the necessary medical attention. These simple acts of understanding and compassion in the circumstances would not have compromised the ongoing police investigation.

SEPTEMBER 6, 1995 — NICHOLAS COTTRELLE IS  
TRANSPORTED BY FOREST AMBULANCE TO  
STRATHROY HOSPITAL

**16.1 OPP's Contact with Ambulance Dispatcher and Forest  
Ambulance Prior to Injuries Sustained by the Occupiers**

Malcolm Gilpin owned and operated the Forest Ambulance Service in 1995. It served the Town of Forest as well as the towns and villages of Watford, Glencoe, and Bothwell.

Mr. Gilpin had six full-time ambulance attendants in 1995. He and his staff were Level I Qualified Providers or P1 paramedics. P1 paramedics have the skills to provide basic life support; they can perform CPR, administer oxygen, and take a person's blood pressure. They can apply splints and are trained in defibrillation.

The Forest Ambulance attendants clearly did not have the skills to administer an intravenous or intubate a patient, nor were they qualified to administer cardiac or controlled drugs to patients they transported to hospital. These are the skills of advanced care or P2 paramedics.

There were no P2 paramedics in either Forest or Strathroy in 1995. Sarnia may have been the closest centre that had advanced paramedics. Sarnia was a thirty-five minute drive from Ipperwash. The next closest area offering P2 paramedics was the City of London, about an hour's ride from Ipperwash Park.

In 1995, Ministry of Health ambulances carried a semi-automatic defibrillator to monitor the rhythm of the heart and to deliver shock, if necessary, to a patient. Medical equipment to administer oxygen and to measure a patient's blood pressure were also carried in provincial ambulances, as well as C-collars and fracture boards.

OPP Sergeant Reid contacted ambulance dispatcher Geoffrey Connors at the Wallaceburg Ambulance Communications Centre on September 6, 1995, shortly before 9:00 p.m. Sergeant Reid requested that one ambulance be placed on standby for the situation at Ipperwash. Mr. Connors then called Malcolm Gilpin at his home, and told him about this request. Mr. Gilpin agreed to call his partner, paramedic Cesare DiCesare, to meet him at the Forest Ambulance Station.



At 9:32 p.m., Sergeant Reid again called Mr. Connors and asked for two ambulances to be dispatched to the OPP checkpoint at Ipperwash Road to stand by. Paramedics John Tedball and Mark Watt were contacted and asked to come to the Ambulance Station.

By 9:41 p.m., paramedics Tedball and Watt were en route to Ipperwash in ambulance 1146. Following closely behind them were paramedics Gilpin and DiCesare in ambulance 1145.

The ambulances drove to the OPP checkpoint at the corner of Ipperwash Road and East Parkway Drive. They were told to proceed to the Ministry of Natural Resources (MNR) parking lot, and they arrived there before 10:00 p.m. The paramedics saw a number of police cruisers and OPP officers in the MNR parking lot. The officers had “long guns” and were dressed “in protective gear” — fatigues, helmets, and other equipment.

According to Mr. Gilpin, Staff Sergeant Wade Lacroix approached the paramedics and told them to remain on standby in the event that ambulance services were needed. Staff Sergeant Lacroix explained that First Nations people had damaged an OPP cruiser as well as another vehicle and had erected barricades. The OPP, he said, did not intend to remove the Aboriginal people from the park.

Staff Sergeant Lacroix asked Mr. Gilpin and the other paramedics if they had brought protective gear. He seemed surprised that the four men were wearing ambulance uniforms without bulletproof vests. As paramedic John Tedball said, Staff Sergeant Lacroix was “surprised the way we were dressed. He asked if we had any body armour and we said no.” These comments made Mr. Tedball anxious.

OPP medic Ted Slomer approached them and asked about their skill level: did the Forest attendants have the training to use MAST trousers, intubate a patient, or administer IV therapy? MAST, or medical anti-shock trousers, apply pressure to a patient’s legs and lower extremities to help direct blood flow to the abdominal area. It is essentially an emergency procedure to increase blood pressure in the upper part of the body. One could lose a significant amount of blood in a gunshot wound and one’s blood pressure could be dangerously low as a result of the blood loss.

The application of MAST trousers is a Level II Qualified Provider or paramedic level 2 skill. The Forest paramedics made it clear they did not have the training to use MAST trousers, intubate a patient, or administer major drugs or IV therapy. This is advanced first aid. Mr. Gilpin surmised that the OPP medic was an advanced level paramedic. In fact, Ted Slomer was certified only as a level 1 paramedic. He was also a Registered Nurse with experience in critical care.

As Dr. Elizabeth Saettler (a physician at Strathroy Hospital) said in her evidence, if the police asked the ambulance attendants about the availability of

MAST trousers, “they had an expectation that there might be serious vascular trauma, as one might expect from gunshot wounds ... I don’t think that there were adequate arrangements to deal with that type of injury ... I don’t think there was adequate preparation from a medical perspective.” Dr. McCallum, an expert in emergency medicine who testified at the hearings, discussed the importance of pre-event planning by the police with local medical centres and emergency providers in advance of a police operation such as Ipperwash.

OPP medic Ted Slomer made it clear that the Forest ambulance staff would not go to the park site but would remain in the MNR parking lot. Slomer himself would attend to the casualties and injured persons at the park, who would then be transported to the parking lot by a Suburban vehicle. It was too dangerous for the paramedics to be in the park area, particularly because they did not have protective gear.

Malcolm Gilpin asked an OPP officer to demonstrate how their protective gear could be removed in the event of an injury. The officer showed him how to dismantle the helmet, the forearm gear, and other protective equipment worn by the OPP officers that evening.

At 10:37 p.m., Mr. Gilpin contacted the Wallaceburg Ambulance Communications Centre to brief them on his conversations with the police. The proximity of Strathroy Hospital to Ipperwash Park was discussed. It was agreed that both Strathroy Hospital and Sarnia Hospital should be notified of possible incoming casualties.

The Forest Ambulance attendants remained on standby in the MNR parking lot.

The Forest Ambulance attendants considered themselves to be under the direction of the OPP. They had little information about the police operations that night, nor did they understand why these plans were being executed in the darkness.

Prior to September 6, 1995, senior members of management from the Wallaceburg Ambulance Communications Centre, as well as the owner/operators of ambulance services in North Lambton and the regional office in London and head office in Toronto dealing with the Ministry of Health, developed a contingency plan concerning the possible need for extra ambulance resources. Unfortunately, while dispatchers and paramedics on duty on the evening of September 6, 1995, may have been aware that there was such a contingency plan, they had not been briefed about the plan, and they did not have access to it that night.

It was at approximately 10:30 p.m. that the paramedics saw about thirty to forty OPP officers dressed in “riot gear” leave the MNR parking lot. The police walked in formation in the direction of Ipperwash Park. At 10:58 p.m., Mr. Gilpin



radioed Wallaceburg Ambulance Communications Centre and asked that a third ambulance with staff be placed on standby.

## **16.2 Popping Noises: Ambulances Dispatched to Highway 21 and Army Camp Road to Transport Nicholas Cottrelle to Hospital**

Cesare DiCesare and the other Forest paramedics heard “a series of popping noises in rapid succession.” “Not being a hunter,” paramedic Mark Watt did not know whether the “pop, pop” sounds were gunshots.

As mentioned, sixteen-year-old Nicholas Cottrelle, who was in the school bus outside the park, felt a burn in his back after he heard gunfire and the bus windows shatter. Nicholas hunched down and tried to back the bus into the park. Assisted by his father Roderick George (“Judas”) and other First Nations men, the dumpster obstructing the path of the bus was moved and Nicholas was guided back toward the park.

Roderick George met up with his son at the park store and noticed a bloody spot on Nicholas’ shirt on his right upper back in the shoulder area. When he lifted his son’s shirt, he saw a “hole big enough I could have put my finger in it ... [A]s far as I was concerned at that point, it was a bullet wound.” Nicholas complained of pain in his lower left side, which his father described as a large graze with “white liquid coming out of it.”

Roderick George instructed his son to get into his car, a blue Trans Am. He asked a fellow occupier to telephone an ambulance from the park store to meet them at the gates to the built-up area. Roderick did not think ambulance attendants would come to the park “knowing that somebody got shot.” He took his son to the main gate: “[I thought] we’d have a better chance of getting him to a hospital quicker from that point.”

His wife Gina George was at home with their daughters. Gina had returned to the built-up area after seeing Dudley’s limp body moved from Robert Isaac’s vehicle to Pierre George’s car. She watched the panic and commotion as Dudley’s siblings Carolyn and Pierre left for the hospital.

Concerned that her husband, Roderick, and her son, Nicholas Cottrelle, might also be hurt, Gina George decided to drive to the park. As she was preparing to leave, Marlin Simon arrived at her house and said Roderick needed her at the gate of the army camp.

When Gina George arrived at the main gate of the army camp, she saw Nicholas in the passenger seat of the Trans Am. Roderick told his wife that their son had been shot. Gina saw a “hole in his back the size of my husband’s finger.” She also saw a “graze” on the side of Nicholas’s back. Roderick suggested

that she drive to the intersection of Army Camp Road and Highway 21 to get an ambulance for their son.

As Gina George pulled up to the police cruisers at the intersection, she was surprised that she did not see any OPP officers. As she got out of her car, “several police jumped out of the ditch, pointing guns” and ordered her to “raise [her] hands in the air and get down on the ground.” The guns were long and looked like rifles. Gina put her hands in the air but refused to lie on the ground: “I didn’t do anything wrong. I was looking for an ambulance for my son.”

Sergeant Slack was in command of the OPP checkpoint near the corner of Highway 21 and Army Camp Road. At 11:06 p.m., minutes before Gina’s arrival at the checkpoint, Sergeant Slack and the other officers manning the checkpoint had heard shots fired from the area of Ipperwash Park. The shots were also heard over officers’ radios.

Sergeant Slack was extremely concerned about the safety of officers at the checkpoint, and ordered them to take positions in the ditches along Highway 21. From these positions, Sergeant Slack and the other officers saw Gina George’s car approaching.

Sergeant Slack testified that he did not know the intentions of the driver of the approaching vehicle, and therefore ordered some of his officers out onto the highway to “clear” the vehicle for weapons, and to determine the purpose of the vehicle’s approach.

After the officers were assured there were no weapons in Gina George’s car, Sergeant Slack came out of the ditch and spoke to her. Gina George told the police her son had been shot and needed an ambulance. Sergeant Slack told her that he could not send an ambulance into the army camp. Although he did not give Ms. George an explanation, Sergeant Slack’s refusal was based on the instability of the situation and the fact that an apparent “gunfight” had taken place minutes before. Gina George was upset and very anxious:

When you want an ambulance, people usually get you one. If you ask for an ambulance, if you go and ask somebody to call 911 or get you an ambulance, people don’t usually ask you why or why should we get you one, or I don’t know if I can get you one ...

I knew they could get me one because they had a radio in that car and they had ambulances parked all over the place, including down at that park ... So they can’t tell me that they couldn’t get me an ambulance. I knew damn well they could get me one and I didn’t want to be questioned as to why should I need one or why shouldn’t they get me one or any other words.



After about a five-minute exchange, the OPP officers told Gina George she must bring her son to Highway 21, which was a short distance from the entrance to the army camp, to have an ambulance transport him to hospital.

After Ms. George returned to the army camp, Sergeant Slack radioed a request for an ambulance for Gina's son. Two ambulances were directed from the MNR parking lot toward Army Camp Road and Highway 21.

Gina George returned to the main gate of the barracks, conveyed the information to her husband, and got into the Trans Am to drive Nicholas to the intersection of Army Camp Road and Highway 21. Roderick George suggested that his sister Tina George accompany them as a precautionary measure, "to be a witness." Roderick was fearful of the police. He testified that he had his wife and sister approach the OPP officers to get an ambulance for his son because he felt anxious about his physical safety after the confrontation with the police. Roderick George had seen the police beat Cecil Bernard George in the sandy parking lot, he had heard the shots fired by the police, and he had watched Dudley George fall to the ground after a bullet hit him.

Tina George had also witnessed some highly tense and emotional moments. She had watched Pierre and Carolyn George depart for Strathroy Hospital with their seriously wounded brother lying limply in the back seat. She had also seen Marcia Simon and Melva George leave the army camp in search of an ambulance.

When the two women and Nicholas reached the intersection of Army Camp Road and Highway 21, Gina George testified that police officers jumped out of ditch, "pointed guns at us and said ... 'You bitches ... put your hands in the air and get away from that car. All three of [you] out of that car.'" Nicholas was also frightened:

We stopped and just out of nowhere there's all these cops come flying out of the ditch, they had rifles, telling us to put our hands up and [they] kept circling the car and my mother was screaming at them, "[D]on't shoot."

The two Aboriginal women put their hands up, but Gina George refused to move her son out of the car. Nicholas had a back injury and she was worried that movement could result in possible spinal damage.

Although OPP officers testified that the police shouted at the women to get out of the car and pointed their rifles at them, the officers did not recall yelling profanities at Tina or Gina George.

Tina George screamed at the officers that they may have "killed somebody and injured a couple [of] minors." She also yelled profanities and told an OPP

officer that his “gun was the devil’s right hand.” Tina was furious that the officers continued to point their guns at her and her sister-in-law Gina — she “knew that Dudley was shot” and believed Nicholas had also been hit by OPP bullets.

### 16.3 Forest Paramedics Hide in Ditch

It was at approximately 11:11 p.m. that OPP medic Ted Slomer asked the Forest paramedics to respond with the two ambulances at the intersection of Highway 21 and Army Camp Road. He said there were two injured persons with possible gunshot wounds. Mr. Gilpin immediately notified Wallaceburg Ambulance dispatch, and within five minutes, the ambulances arrived at the intersection and pulled up to the police cruisers parked on the south side of the highway.

The paramedics saw a car on the north side of Highway 21 as they approached the intersection. Two TRU team officers were pointing rifles at two Aboriginal women who had their hands in the air. This clearly caused the paramedics anxiety. An officer instructed the four of them to climb into the ditch beside the ambulances, as the area was not safe.

Gina George saw the ambulances and paramedics on the opposite side of the road. She was anxious and upset that they did not immediately attend to her son, and she was angry at the police for preventing the ambulance attendants from discharging their duty to care for injured persons:

... usually when an ambulance shows up, they’re right there ready to do their jobs and they were being prevented from doing their job ...

I was upset ... because it seemed like they weren’t being allowed to come across the road for quite some time ... It just seemed like it was a very long time ...

Gina said fifteen minutes passed from the time she first asked the police to call an ambulance until she saw the ambulance lights approach the intersection of Army Camp Road and Highway 21. And when the ambulances finally arrived, the OPP did not allow the paramedics to treat and transport her sixteen-year-old son to the nearest hospital.

But as paramedic John Tedball said in his evidence, when paramedics respond during an incident, it is standard protocol for the paramedics to stay back at a distance until the scene is clear and the police instruct them to come forward.

The paramedics heard shouting and profanities uttered by the women, but they could not decipher the precise words exchanged between the officers and Tina and Gina George. The four paramedics crouched in the ditch for a short time,



about two minutes, before the OPP permitted them to cross the highway to medically assess and transport the injured. They unloaded their stretcher and other first aid equipment. The two Aboriginal women remained standing with their hands up and the officers continued to point their rifles.

A male teenager, Nicholas Cottrelle, sat in the car. An OPP officer told the paramedics the young man had a possible gunshot wound. When paramedic Mark Watt asked the patient what had happened, Nicholas Cottrelle said he had been shot in the back. The paramedics cut off his shirt and saw “a puncture wound on his right posterior back ... about the size of a pen” between his ribs. There was also an abrasion on his left flank. Mark Watt had never seen a bullet wound.

The paramedics did a quick assessment. Nicholas was alert, his respiration was stable, and he had good skin colour. Watt and his colleagues bandaged the wound. They stabilized his neck with a C-collar and carefully lifted him onto a spinal board, taping his head with towel rolls. This precaution was taken because the wound was close to his spine and the paramedics did not know the full extent of the boy’s injuries.

At approximately 11:30 p.m., paramedics Malcolm Gilpin and Cesare Di-Cesare were dispatched to 6840 Nauvoo Road (the Veens’ home). Unbeknownst to them, Dudley George had arrived in a car with a flat tire in the driveway of the Veens’ home with his brother, sister, and J.T. Cousins.<sup>1</sup> They then left the intersection of Army Camp Road and Highway 21.

The OPP officers continued to point their guns as the paramedics loaded Nicholas Cottrelle into the ambulance. Gina George said she was Nicholas’ mother and asked to accompany her son in the ambulance to the hospital — she was refused:

And I said, “What do you mean, I can’t go with him? He’s just a child. You just can’t take away my child and not let me go.” And they said, “No, you’re not going with him.” ... They still had the guns pointed at us when they told me I couldn’t go ... What was I supposed to do? Run across there and have them shoot at me, too, or have them assault me in front of my son? I wasn’t going to do that.

Mark Watt testified that “the last thing he needed” in the back of the ambulance was an agitated mother interfering with his focus on the patient, and that only in exceptional circumstances would a parent be allowed in the back of the ambulance to accompany their child to the hospital. Nicholas Cottrelle was

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1 Dudley George’s trip to Strathroy Hospital and their stop at the Veens’ home as a result of a flat tire are discussed in Chapter 18.

sixteen years old. He had just been involved in a terrifying confrontation with the police, in which gunshots were fired by members of the OPP at the occupiers. The paramedics and police could have displayed some compassion and could have either allowed Nicholas' mother, Gina, to accompany him to the hospital, or suggested that she follow the ambulance to Strathroy.

Gina George found it "strange" that the paramedics did not ask her any questions either about Nicholas' medical history or his injuries. As she said at the hearings, they generally ask, "how old is your son," or "how is [his] general health ... allergies, that type of thing, and none of that was asked." In my view, it is important that police officers ensure that information from family members or others about the circumstances of the injury and the medical history of the patient be conveyed to medical personnel who transport and treat the patient. This is also discussed in the following chapters.

Paramedic Mark Watt and OPP Constable David Boon entered the rear of the ambulance. The Forest Ambulance left the site at about 11:39 p.m. The attendants had been at the intersection of Highway 21 and Army Camp Road for about twenty-three minutes.

Nicholas Cottrelle was frightened as the ambulance left the area:

... [T]hey put me in the ambulance with this cop ... and took me off without saying where I was going [and I] didn't know what was going on with my mother, the rest of the family.

In the ambulance, Nicholas "was thinking a lot of things but mostly [he] was thinking if [he] was going to see anybody again."

Roderick George and his wife Gina sat in the gatehouse of the army camp worrying about their son and the other Aboriginal people injured in the police confrontation. They listened to the radio for the latest developments because they did not have a telephone at their home. Gina George sat there in the early hours of the morning of September 7:

... [I was thinking] about my son being taken to the hospital by himself and I wanted to go and I wanted to know how he was. And my husband and I sat in that gatehouse for a long time listening because we didn't have a phone. We had the radio on and at some point, one of the radio stations said there had been shootings and that there was two fatalities.

And I became very concerned because I knew that Dudley was one of the ones who had been shot ... I kind of knew even from looking at



him that it was a fatal gunshot wound and I didn't know who the other fatality was.

And all I knew was that my son was gone and they wouldn't let me go. I wanted so desperately to leave there, to be with my son.

## **16.4 The Ambulance Trip to Strathroy Hospital**

Paramedic John Tedball drove the ambulance to Strathroy at Code 4 — at high speed with the siren on and the lights flashing. He left the intersection of Army Camp Road and Highway 21 at about 11:39 p.m. He was concerned that the patient in the ambulance had a gunshot wound — the extent of his injury was unknown.

Mark Watt assessed Nicholas Cottrelle during the journey. His pulse and respiration were stable. The paramedic administered oxygen to the patient. He did not see an exit wound for the bullet and was concerned about the patient's liver, spleen, and other major organs.

Nicholas, who told Mark Watt he was sixteen years old, was calm and co-operative on the ambulance trip to Strathroy. Recorded in Mr. Watt's dispatch call was the following: "16 years. Male. Lower posterior gunshot wound from a .223 rifle shell." Constable Boon had conveyed the information on the apparent gunshot wound to the paramedic.

During the ambulance trip, Constable Boon arrested Nicholas Cottrelle for mischief. Constable Boon testified that he advised Mr. Cottrelle of his rights to counsel and used the young person's caution regarding statements to the police. When Constable Boon asked Nicholas Cottrelle if he wanted to call a lawyer, Mr. Cottrelle replied, "[W]ell, obviously I can't right now." Constable Boon said that he advised Mr. Cottrelle that he was entitled to have a parent or guardian present during any questioning. Although paramedic Watt heard Constable Boon read Nicholas his rights, Mr. Watt could not remember whether the officer advised the sixteen-year-old that he had the right to have an adult or parent with him. This was the first time Mark Watt had transported a minor charged with a criminal offence. Nicholas Cottrelle had no recollection that the OPP officer read his right to counsel or told him that he could have a parent or guardian present during police questioning.

The ambulance arrived at Strathroy Hospital at approximately 12:06 a.m. The Forest Ambulance had travelled from the intersection of Army Camp Road and Highway 21 to the Strathroy Hospital Emergency Department in about twenty-seven minutes.

## 16.5 Patients from Ipperwash Begin to Arrive at Strathroy Hospital

Several staff at Strathroy Hospital, such as nurse Glenna Ladell, were not aware that First Nations people had occupied Ipperwash Park. It was shortly before 11:00 p.m. when Wallaceburg Ambulance dispatch notified the hospital that ambulances had been sent to the Ipperwash Park area, and that nurse Ladell and other staff learned of the possibility that injured persons would be transported to Strathroy Hospital. They were notified only minutes before Dudley George was shot.

Dr. Alison Marr, the emergency physician on call that night, was also not aware of the First Nations occupation. She learned of the possibility of casualties some time between 11:00 p.m. and 11:30 p.m. There were certainly no contingency plans in place at the hospital for the receipt of injured persons from the Ipperwash site.

When Jackaline Derbyshire, the nurse in charge of Strathroy's Emergency Department, started her evening shift, the information from Wallaceburg dispatch was relayed to her. Knowing there was a "bare bones" staff on the night shift, she contacted Marlene Bergman, the nursing supervisor for the hospital. Preparations were made to pull staff from other floors of the hospital if necessary. Some nurses, such as Glenna Ladell, remained on duty after her shift ended.

The London Ambulance dispatch contacted the hospital at about 11:40 p.m. Two patients with gunshot injuries were en route, one by ambulance and one by private vehicle.

Three people from the Ipperwash Park area arrived at the hospital after midnight, all within fifteen to twenty minutes — Nicholas Cottrelle, Cecil Bernard George, and then Dudley George. Nurses began to prepare the trauma room for the arrival of these injured people. IVs and other equipment were set up and patients were moved to other wings of the hospital. As nurse Derbyshire said, although medical staff did not know the particulars of the injuries, they decided to "prepare for the worst."

The London OPP informed the hospital at midnight that officers would be arriving shortly for security reasons. Nurse Derbyshire instructed staff to "chart meticulously," to restrict communications with patients to medical questions, and to refrain from engaging in social conversation. It was important to keep in mind, she said, that "possibly anything they were going to say or do that evening would become a legal issue."

Dr. Marr was surprised the hospital did not receive any details on the severity of the injuries prior to the arrival of the patients. She expected this information to be conveyed by the ambulance attendants while they were transporting



the patients to Strathroy. In my view, it is essential that police ensure that medical professionals who treat and who transport patients are aware of medically important information about the incident and about the patient who has been injured.

## 16.6 Arrival of Nicholas Cottrelle at Strathroy Hospital

The first patient to arrive from Ipperwash was Nicholas Cottrelle. Six or seven nurses were stationed at the emergency department as he was wheeled into the hospital at approximately 12:04 a.m.

Jackaline Derbyshire was surprised she had not received the particulars of Nicholas Cottrelle's injuries or his medical condition while the Forest Ambulance transported him to the hospital. It was standard procedure for ambulance attendants to be "patched" through to hospital emergency department medical staff to provide advance notice of the patient's injuries.

Nicholas Cottrelle was brought into the trauma room. This room had an operating table and accommodated three patients.

The ambulance attendants told the emergency physician and nurses that Mr. Cottrelle might have sustained a gunshot wound on the right side of his back in a confrontation with the police. He had been fully alert during transport and his blood pressure and pulse had been stable. It does not appear that an OPP officer communicated with hospital staff to convey information to Dr. Marr on the possible source of the teenager's injuries.

In my view, when police officers arrest a person who has been injured, they should provide emergency personnel, such as paramedics, with information they have about how the injuries were caused so that this information can be conveyed to hospital staff. It is also important that ambulance attendants and police officers convey to hospital staff information on how the patient sustained his or her injuries. In Dr. Marr's opinion, this information should have been conveyed to medical staff at Strathroy Hospital.

The hospital medical staff conducted a medical assessment. The patient complained of pain on both his left and right sides. He said he heard gunshots immediately before he felt the pain. He was alert, oriented, and his respiration was stable. His blood pressure and pulse were within normal limits. A round wound one centimetre in diameter was visible on his right lower back. On the left side was a linear four-inch abrasion. There did not appear to be any fluid in his chest.

Dr. Marr's preliminary assessment was that Nicholas Cottrelle's injuries were not consistent with gunshot wounds. She said, "[O]ne would have expected if a bullet had gone through that location that he would be internally bleeding," he would "be in some respiratory distress," and "have an unstable vascular system, which he did not."

An intravenous line was inserted to prepare for the possibility that Nicholas Cottrelle's condition could deteriorate. X-rays of his chest and abdomen were ordered.

Dr. Marr had been attending to Nicholas Cottrelle for less than five minutes when Cecil Bernard George arrived by stretcher in the emergency department. Her attention turned to Mr. George as his medical condition appeared to be unstable.

Nicholas noticed the patient "was having a real hard time breathing." He said Cecil Bernard George was so badly beaten he "didn't even recognize him." Nurse Derbyshire decided to move Nicholas outside the trauma room as he seemed to be in stable condition.

In the following chapter, I discuss Cecil Bernard George's trip to the hospital and the medical treatment he received at Strathroy Hospital.

## 16.7 Police Presence at Strathroy Hospital

When the OPP arrived at Strathroy Hospital, they claimed their presence was necessary to ensure the safety of patients and staff. A rumour was circulating that First Nations people might attack the hospital or be disruptive. The officers decided to set up police communications in the patient registration area. They patrolled the hospital halls. Some officers remained outside the rooms of the First Nation patients who had been transported from the Ipperwash Park area.

Detective Constables Dew and Speck, Detective Sergeants Richardson and Bell, and a number of other police officers were ordered to attend at Strathroy Hospital by A/D/S/Sgt. Wright for the purpose of identifying the wounded people and to make arrests. Mark Wright explained:

Well, we had a vehicle and a number of individuals at the hospital, and I felt it prudent to get as many detectives to that scene as possible, as quickly as possible, so that they can deal with the situation that was unfolding. It was a very dynamic situation at that time. I really didn't have a whole lot of information with regards to what had taken place ... in regards to the confrontation, and I felt it prudent to get as many seasoned criminal investigators to the hospital as possible, as quickly as possible.

Detective Constables Speck and Dew arrived at the hospital at 11:48 p.m.

Detective Sergeant Richardson had instructed officers for security reasons to stay with Nicholas Cottrelle, Cecil Bernard George, and Dudley George when they arrived at the hospital.



Medical staff described the police presence at Strathroy Hospital as intimidating, distracting, excessive, and fear-mongering. Doctors and nurses saw police officers dressed in “body armour” and “riot gear ... quite obviously prepared for violence.”

Both Dr. Marr and Dr. Saettler found it disruptive and disconcerting to have the police in the hospital, particularly dressed in that attire. The tense atmosphere was clearly not conducive to the medical care of patients. According to Dr. Saettler:

... [T]hat degree of police presence was excessive and ... somewhat intimidating. I have not encountered that sort of police presence in the hospital on any other occasion.

Having the police “walking around in body armour and patrolling the halls ... was a very strange situation,” said Dr. Saettler. She thought it was an “overreaction” and “sort of fear-mongering on the part of the police to justify their presence there.” Police officers were also seen outside the room of Cecil Bernard George and Nicholas Cottrelle. Dr. Saettler thinks the CEO of Strathroy Hospital asked the police to either reduce the number of officers or eliminate their presence as it interfered with the functioning of the hospital.

## **16.8 Presence of Foreign Particle in X-Ray of Nicholas Cottrelle**

Nicholas Cottrelle had been stable at the hospital for forty minutes when Dr. Saettler reassessed him. She examined his wounds. The sixteen-year-old told her that he was in a vehicle at the time he heard gunshots and shattering glass. He said there were no guns in the vehicle and the gunshots came from ten to fifteen feet away. The teenager was conscious, lucid, and co-operative. Dr. Saettler agreed with Dr. Marr that his medical condition was not consistent with a major vascular injury and that he did not appear to have a life-threatening wound.

The physicians listened to his chest and reviewed his x-rays. The abdominal x-ray disclosed the presence of a foreign object:

There is a tiny triangular, possibly metal density projected in the right upper abdomen between 9th and 10th ribs. Apart from this, no abnormality is noted with no evidence of free air or major obstruction.

The ultrasound of his abdomen did not yield anything unusual — his liver, spleen, pancreas, kidneys, and gallbladder were normal.

It was decided that Mr. Cottrelle would be observed overnight in the hospital. Although he did not appear to have bullet wounds, Dr. Marr could not explain

the presence of a foreign substance in his body. The Strathroy emergency doctor planned to re-examine the x-rays the following day and repeat blood work to ensure there was no drop in hemoglobin from any internal bleeding.

Dr. Saettler returned to the hospital before departing on holiday and left instructions regarding Nicholas Cottrelle's ongoing care.

## 16.9 Gun Residue Tests Performed on Nicholas Cottrelle

OPP officers stood in the hallway and in Nicholas Cottrelle's hospital room. Exhausted from the night's events, Nicholas drifted in and out of sleep. Because of his mistrust and fear of the police, he fought to stay awake:

I was trying to stay awake ... I was still scared. I didn't trust them. I didn't trust police.

I didn't know what they were going to try to do to me ... so I was just trying to stay awake for as long as I could.

Despite his attempts to remain awake, Nicholas was not successful. In the early hours of September 7 at about 4:20 a.m., he woke up to find "cops all around [his] bed." His hand was wet and the police were rubbing something on it. He has no recollection of consenting to this gun residue test. Dr. Saettler or Dr. Marr did not know police officers were trying to extract gun residue from Mr. Cottrelle's hands.

Police officers took Mr. Cottrelle's clothes out of the garbage can and left.

Jim Kennedy and his partner from the Special Investigations Unit (SIU) tried to question Nicholas Cottrelle in his hospital room. Nicholas refused to engage in an exchange: "I told them I wasn't going to talk to them ... because I didn't know what was going on." Nicholas does not recall the officers informing him of his right to have an adult present during questioning. Nor does he remember the officers facilitating any telephone calls from the hospital to contact his parents, a relative, or lawyer. He said the police were always in or within the vicinity of his room, which gave him little privacy. His mother, Gina George, was deeply upset at the police when she learned her teenage son had been questioned when he was in his hospital room.

Dr. Marr saw Nicholas Cottrelle at about 8:00 a.m. on September 7. She thought shattering glass likely caused his wounds. She discussed the x-ray with the radiologist, which confirmed that there was no evidence of a significant penetrating wound, or damage to the heart, lungs, or abdomen.

Nicholas Cottrelle was discharged later that day at about 2:00 p.m. The teenager continued to have pain on both sides of his back. It was Dr. Marr's



practice to speak with the parents of a minor patient but this did not happen. Dr. Marr described at the hearings the tension and deviation from her practice of communicating with family members or close friends of a patient:

The situation was quite strained and quite different from what one normally encounters ... [W]hen I look back at the interactions ... *it's remarkable, perhaps, that I didn't have any formal interaction with any of the relatives or accompanying friends or important people of the injured, either Dudley George or the other two ...*

*Normally, though, as the attending physician, you would have some interaction with family members and attend to their needs and give them some communication around the health and welfare of the injured parties and I don't recall having any involvement in that regard.*  
(emphasis added)

Nicholas Cottrelle, who was under arrest, was discharged from the hospital to the police. The OPP transported the sixteen-year-old to the Strathroy Detachment.

Dr. Marr did not pay much attention to the “tiny triangular metal density” in the abdominal x-ray of Mr. Cottrelle before he was discharged. However, she did try to contact him by telephone after he left the hospital but was unsuccessful. She wanted to let him know there was a possibility of infection from foreign fragments in his body.

On September 22, 1995, Dr. Marr sent Nicholas Cottrelle a letter asking him to contact her to discuss his wound. She did not receive a response from the patient, his parents, or anyone else on Nicholas' behalf. Dr. Marr thinks she also raised with the SIU the possibility of a metal fragment in Nicholas Cottrelle's back. Dr. Marr was uncertain whether there was an actual metal fragment in his back, or simply an artifact on the x-ray film from the hospital bed or the drapes in his room.

Nicholas Cottrelle later learned there was a piece of glass in his back, not a metal or bullet fragment. A doctor in Forest extracted the glass.

SEPTEMBER 6, 1995 — CECIL BERNARD GEORGE IS  
TRANSPORTED BY ST. JOHN AMBULANCE TO  
STRATHROY HOSPITAL

**17.1 St. John Ambulance Volunteers are Dispatched  
to Ipperwash**

When Glen Morgan and Karen Bakker-Stephens, volunteers with St. John Ambulance, were dispatched to the Ipperwash area to provide support for the communications unit, they never anticipated that the OPP would ask them to provide medical services. Neither of them had the training or experience to transport a semi-conscious man to hospital. Nor did Peter Harding, Superintendent for St. John Ambulance London-Middlesex, who had arranged with OPP Inspector Carson for the provision of the communications unit, expect the police to ask his staff for medical assistance and the transportation of an injured man to hospital.

When Mr. Harding had a discussion with Inspector Carson prior to the park occupation, he understood that the OPP was solely requesting a communications unit that contained equipment such as radios, microphones, a computer, and a telephone system. Mr. Harding explained to the OPP that a vehicle that carries gas and oil to service the communications unit would also be needed. Inspector Carson agreed to take these two St. John Ambulance vehicles. As Mr. Harding said, St. John Ambulance's sole involvement with the OPP was to "furnish a good communications facility for them so that they could ... make sure things were safer for everyone involved." Inspector Carson confirmed that he discussed with Mr. Harding the use of a trailer as a communications facility.

Two St. John Ambulance volunteers, Karen Bakker-Stephens and Glen Morgan, were asked to travel to the Ipperwash area on the evening of September 6 to service the communications unit for the OPP. As Mr. Harding commented, "they were fairly recent people to St. John Ambulance" who had not been involved in large incidents. Nor were they trained paramedics.

In September 1995, Ms. Bakker-Stephens was a student in a registered nursing (RN) program at Fanshawe College. She did not ultimately complete this RN program. Instead, she enrolled in a one-year program at that college in practical nursing, from which she graduated in 1996.



Ms. Bakker-Stephens was a volunteer First Aid Responder in London with St. John Ambulance in September 1995. She went to soccer games and track meets with other St. John personnel to provide first aid in “non-life threatening” situations, such as cuts, scratches, or sprains. She had never transported an injured or sick patient to hospital. She was twenty-two years old.

Glen Morgan had been a St. John Ambulance volunteer since 1993. Initially, he provided computer and administrative support to the organization. He was also a First Aid Responder and had completed the Level I Qualified Provider course at St. John Ambulance. This course conveys knowledge and skills beyond a basic first-aid course and includes training in the use of equipment such as splints and spine boards, and equipment to administer oxygen. In 1995, he was twenty-five years old.

As previously mentioned, it was Mr. Harding’s understanding, from his earlier communications with Inspector Carson, that the OPP only required a communications unit in the Ipperwash area. Two St. John Ambulance volunteers with little training were required for the duties of replacing the gas and oil in the generators of the communications unit. As Mr. Harding said at the hearings:

... given the fact that it was a tender vehicle and there was no other requirement, we use the less trained staff because it’s just ... gas filling and oil checking and that type of thing ... It’s [a] more mundane type of responsibility.

Unbeknownst to Peter Harding and the St. John Ambulance volunteers, OPP medic Ted Slomer considered the St. John Ambulance vehicle to be part of the civilian emergency medical services on scene on the night of September 6.

Had the OPP informed St. John that there could be medical needs, more senior personnel with appropriate medical training would have been assigned to the Ipperwash site. As the Superintendent of St. John Ambulance said:

... if we knew we were going to get into transport or medical requirements, there would have been someone else assigned; that was not our case and that was not the reason why we were there.

It was in the afternoon of September 6 that the Divisional Superintendent, Mr. Harding’s son Paul, asked Mr. Morgan if he could go to Ipperwash to service the communications unit. Glen Morgan was amenable and returned to his home to get some reading material for his evening shift at Ipperwash: “I grabbed myself a novel because I thought, initially, that I’d probably just be sitting in our utility vehicle, reading a book and/or sleeping for most of the evening.” He returned to the London office of St. John Ambulance and was instructed to report to the

OPP Detachment in Forest. Mr. Morgan was not told that he would be expected to provide first aid or medical services on site.

Mr. Morgan prepared a vehicle for his trip to Forest. It was a St. John utility vehicle, unit 406, which contained extra generators, lighting, and cans of gasoline and oil. This unit was designed to maintain the communications facility. Mr. Morgan left London at approximately 8:00 to 9:00 p.m. on the evening of September 6.

Ms. Bakker-Stephens was instructed to drive to Forest in a medical unit as St. John had few transport vehicles available at that time. Inscribed on the sides of the medical vehicle were the words “St. John Ambulance” and “Mobile First Aid Post.” As Peter Harding said, it was purely coincidental that a St. John Ambulance was driven to Ipperwash, as a medical unit had not been requested by the OPP. He stated: “[S]o it was just fortunate or unfortunate, whatever the case may be, that we had a medic unit sitting there; it was not scheduled to be there.” Mr. Harding explained that there is no connection between the ambulances operated by the province and those of St. John Ambulance. There is no provincial support of St. John Ambulance, nor is his organization subject to provincial ambulance guidelines.

## **17.2 The OPP Give Instructions to the St. John Ambulance Volunteers**

Glen Morgan and Karen Bakker-Stephens arrived at the OPP Detachment in Forest at approximately 10:00 p.m. in their respective St. John Ambulance vehicles. They saw police officers in the parking lot and several officers inside the building.

An OPP officer briefed the two volunteers. Mr. Morgan explained that they were the St. John Ambulance shift crew for the evening. The OPP officer instructed them to drive to the Ipperwash Park area and to remain with the Ministry of Health Ambulance Units. He said the OPP might need their assistance and he asked them to be on standby. He did not convey any particulars of the medical services the OPP could need that evening.

Ms. Bakker-Stephens did not think her role would be any different from that described by St. John personnel in London earlier that evening. She was not told by the OPP at the approximately 10:00 p.m. briefing that there was a possibility of gunfire at the park. As she said at the hearings, had she known this, she would have

... made a few phone calls back to London to check with my supervisors ... I'm not comfortable with that situation ... It was something I wasn't trained for.



She knew Ministry of Health ambulances have more extensive and up-to-date equipment, and that their attendants and drivers have more training than St. John Ambulance personnel. She said that much of St. John Ambulance equipment is second-hand and contains very basic equipment such as stretchers, blankets, bandages, back boards, and C-collars, as well as ice and water. Neither Ms. Bakker-Stephens, nor, to her knowledge, Mr. Morgan, have a Class F license, which was required to transport injured people by ambulance.

Glen Morgan and Karen Bakker-Stephens arrived at the Ministry of Natural Resources (MNR) parking lot shortly after 10:00 p.m. They saw the St. John communications unit, two Ministry of Health ambulances, police cruisers, and some OPP officers. Except for the moonlight, there was very little light in the parking lot that evening. OPP medic Ted Slomer approached and instructed the two volunteers to remain on standby at their unit. He said medical support from St. John Ambulance might be necessary. Mr. Morgan considered himself exclusively under the control of the OPP from the time he arrived at the OPP Detachment in Forest:

... I deferred to all instruction from the police officers as they were in charge of that scene ... [T]hey were the ones to request our presence, they're in charge of the scene, and in the emergency response system for the province of Ontario — police, fire, and ambulance do supersede St. John Ambulance. We will defer to their instruction.

Mark Watt and John Tedball, paramedics from the Forest Ambulance Service who were on standby in the MNR parking lot, knew that St. John Ambulance was a volunteer organization and that their staff were not qualified paramedics. Mr. Tedball testified that he expected the OPP medic would know the medical skill limitations of Mr. Morgan and Ms. Bakker-Stephen.

Karen Bakker-Stephens testified that she told Ted Slomer on her arrival in the MNR parking lot that she was a student nurse, not a Registered Nurse. She wanted to be sure the OPP medic was aware of the limits of her skills and training. In his evidence, Ted Slomer said that he came away from the same conversation with a different understanding. He understood that Karen Bakker-Stephens would be comfortable transporting a patient, and that she was a qualified nurse, rather than a student nurse.

### **17.3 Banging Noises and the Arrival of Cecil Bernard George in the MNR Parking Lot**

Within about an hour of their arrival, both Ms. Bakker-Stephens and Mr. Morgan heard repeated banging noises. Ms. Bakker-Stephens thought it could be

firecrackers. The prospect that he was hearing gunfire certainly crossed the mind of Glen Morgan:

... I did hear banging noises. I'm not trained to recognize specifically the sound of gunfire or different types of gunfire, but there were banging noises a distance from us. Couldn't really make out voices or anything like that but that was the one memory that I do have that's relatively distinct.

Mr. Morgan added:

Probably in my own mind I was thinking that [I was hearing gunfire], a little worried about it and believing that there were police present, that there was a conflict. I was hoping it wasn't ... I couldn't be sure what it was but ... that was one of the options that crossed my mind.

Shortly thereafter, the two Ministry of Health ambulances left the MNR parking lot. These ambulances had been dispatched to Army Camp Road and Highway 21 in response to a request for an ambulance made by Sergeant Slack. Mr. Morgan, anxious that he was not a qualified paramedic, realized they were next in line in terms of medical response. One or two vans then entered the area and parked about thirty to forty feet from the St. John Ambulance volunteers. There appeared to be a person seated in the back of the van.

OPP medic Ted Slomer testified that an Emergency Response Team (ERT) member approached him in the MNR parking lot and told him a person in custody had been in a fight with the Crowd Management Unit (CMU) and might need assistance. When he first saw Cecil Bernard George, he was lying on his side on the floor of an OPP van. His hands were cuffed behind his back. Slomer did not receive any further information from the officers about Mr. George's condition or his injuries.

As previously mentioned in Chapter 14, Mr. Slomer immediately began to assess Cecil Bernard George. He noted that Mr. George was not bleeding and had not vomited. He was not responsive to voice, but would open his eyes when touched, and then close them. Slomer explained that because the assessment took place in a tactical and/or operational environment, he checked Mr. George for weapons and other dangers before checking his airway.

Mr. Slomer performed an assessment called the Glasgow Coma Scale, which relies on the observations of the assessor along three different indices of brain functions. As a result of this assessment, the OPP medic concluded that Cecil Bernard George had an altered mental state and required further medical treatment. There were no indications of a significant, life-threatening injury. He had abrasions on



the side of his face, a swollen upper lip, and a laceration to the back of his head. Mr. Slomer suspected a head injury. The OPP medic did not administer any further treatment to Mr. George.

The OPP medic approached Mr. Morgan and Ms. Bakker-Stephens and reported that there was an Aboriginal male casualty. He asked them to transport the patient to Strathroy Hospital. This OPP request was made about ten to fifteen minutes after the two St. John Ambulance volunteers heard the banging noises. They had previously explained to the OPP medic that their ambulance contained very basic equipment, not the advanced medical devices on a Ministry of Health ambulance. Ted Slomer proceeded to give them a very brief patient history — a swollen lip and a laceration to the back of the head. The St. John Ambulance volunteers were not told about the circumstances that gave rise to Cecil Bernard George's injuries.

Ted Slomer advised them of the patient's condition and conveyed the impression that the patient was not badly hurt. Mr. Morgan said that had he been informed by the police that the patient had a more serious head injury, or that he had suffered from a concussion, this would likely have raised concerns about transporting this patient: "a lot of those things will indicate shock, which can be a fairly significant medical circumstance."

Mr. Morgan and Ms. Bakker-Stephens were not able to contact their London office to notify their superiors of the OPP's medical instructions. There was a radio in their ambulance, but because of the frequencies, they were unable to contact the St. John office.

As Glen Morgan approached the police van, he noticed that Mr. George was slouched with his head down. He did not seem to be fully alert or coherent. His hands were cuffed.

With the assistance of OPP officers, Cecil Bernard George was transferred from the van to a stretcher and loaded into the St. John Ambulance. An OPP officer sat in the passenger seat of the ambulance to accompany them on the trip to Strathroy Hospital. Mr. Morgan knew that Sarnia had better medical facilities than Strathroy, but the decision had been made by the OPP medic, the St. John Ambulance volunteers, and the Ministry of Health (MOH) paramedics that Cecil Bernard George would be transported to Strathroy Hospital because it was somewhat closer. As Mr. Morgan said, the "golden hour" in first aid for trauma or injury patients is critical: "getting them to professional help in that first hour is the most critical time."

Mr. Morgan drove the St. John Ambulance to the hospital while Ms. Bakker-Stephens sat in the back of the vehicle attending to Cecil Bernard George.

## 17.4 The Trip to Strathroy Hospital — Fear Cecil Bernard George No Longer Had a Pulse

As the ambulance began its approximately forty-minute journey to Strathroy Hospital, Ms. Bakker-Stephens monitored Cecil Bernard George's medical condition. According to her notes, Mr. George suffered:

1. a deep 2-cm laceration to upper lip – wound edges not well approximated and bleeding profusely;
2. laceration to back of the head;
3. blunt trauma to the left forehead;
4. abdominal pain — whole region;
5. pain and swelling to right arm above and below the elbow.

Ms. Bakker-Stephens checked Mr. George's vital signs about every ten minutes to assess whether he was going into shock or whether his condition was stable. She monitored his chest, his respiration, and she checked his pulse on the inside of his wrist or beneath his chin.

As Ms. Bakker-Stephens was checking his vital signs for the second time, the patient lost consciousness. The St. John Ambulance volunteer could not find Mr. George's pulse, he did not seem to be breathing, and his pupils appeared to be unresponsive to a flashlight. She thought he might have suffered a brain injury. She immediately told Mr. Morgan about the lost pulse and the patient's cessation of breathing, and she asked him to initiate Code 4 — quicker speed, lights, and sirens. As Ms. Bakker-Stephens said at the Inquiry, "I tried to stay calm ... I was worried about getting him to hospital ... I considered it life-threatening."

Glen Morgan quickly conferred with the police officer and initiated Code 4. He increased the speed of the ambulance from 80 kilometres to about 110 to 115 kilometres per hour. Mr. Morgan estimated that they had travelled about half the distance to Strathroy Hospital when he was alerted to the deteriorating condition of the patient.

Ms. Bakker-Stephens thinks she shook Mr. George and instructed him to "wake up." Probably within a minute, she was able to detect a pulse and respiration. The pupils in his eyes became more responsive. Mr. Morgan continued to travel at Code 4 to the hospital. Cecil Bernard George appeared to have sustained more serious injuries than Mr. Morgan had initially thought.

Ms. Bakker-Stephens thought that additional medical equipment in the ambulance would have assisted in assessing the patient's vital signs. A blood-pressure



cuff, for example, would have helped Ms. Bakker-Stephens monitor Mr. Cecil Bernard George's medical condition. Such medical equipment is in Ministry of Health ambulances.

Mr. Morgan continued the trip to the hospital with Code 4, as a weak pulse could indicate that Mr. George was in a state of shock. If that was the case, the patient needed to be in the care of medical professionals as soon as possible. Mr. Morgan tried to radio the Central Ambulance Communications Centre (CACC) to inform them of the patient's status, but he was unsuccessful.

At various times during the journey, Ms. Bakker-Stephens asked Mr. George how he had sustained his injuries. Cecil Bernard George was unresponsive. He kept repeating: "I'm not going to hurt you." Ms. Bakker-Stephens quickly realized that Mr. George was not oriented to time, place, and person, and that he appeared to be suffering from a head injury.

Both St. John Ambulance volunteers wished the OPP had told them how Cecil Bernard George had sustained his injuries as well as the seriousness of his medical condition. Had this been the case, they would have used a spinal board or placed a C-collar on the patient, and Mr. Morgan would likely have initiated a Code 4 at the beginning of the ambulatory transport. After they later learned of the circumstances in which Mr. George had been injured, St. John Ambulance volunteer Ms. Bakker-Stephens thought that the patient should have been transported in an MOH ambulance with better trained staff and equipment.

In my view, the OPP should not have used a St. John Ambulance vehicle to transfer an injured person to hospital on the night of September 6, 1995. St. John Ambulance personnel did not have the training, nor did their vehicle contain the same medical equipment as an MOH ambulance for injured patients en route to hospital. It is essential that appropriately trained paramedics in fully equipped ambulances transport injured patients in such situations. It is also fundamental that police ensure that medical staff who transport patients in ambulances as well as hospital staff who treat these patients be aware of medically important information about the incident and the injured patient.

Cecil Bernard George had a murky recollection of his journey to the hospital. He recalls being transferred to a vehicle with a "lady" (St. John Ambulance volunteer Karen Bakker-Stephens). He probably knew he was travelling in an ambulance. Although he was in physical distress and his thinking was not clear, Cecil Bernard George remembers assuring the woman attendant that she should not be frightened and that he would not hurt her. Other than this, he has little memory of the trip to the hospital. Mr. George said, "I was tired; I wanted to go to sleep." Cecil Bernard George continued to lapse in and out of consciousness and has no recollection of arriving at Strathroy Hospital.

## 17.5 Cecil Bernard George is Treated at Strathroy Hospital

The St. John Ambulance arrived at Strathroy Hospital after midnight. With the assistance of the police officer, Cecil Bernard George was placed on a stretcher and wheeled into the emergency department.

Hospital staff were surprised that they had not received advance notice of the patient's arrival. Typically, the ambulance attendants advise the hospital of the nature of the injuries and the medical condition of the patient both to enable staff to prepare the necessary instruments and equipment, and to alert physicians and nurses to the arrival of the patient. As a Strathroy Hospital nurse said, "it saves time, and in any trauma situation, the sooner you can intervene and re-balance the body situation, the better the outcome."

It was also surprising that a St. John Ambulance vehicle had transported Cecil Bernard George from the Ipperwash site. The supervising nurse of the Strathroy Emergency Department, Jackaline Derbyshire, said that in the past only patients from sporting events or community festivals had been transported by St. John Ambulance. It was well known that St. John Ambulance volunteers were not paramedics and that St. John Ambulance medical vehicles did not contain the same equipment as Ministry of Health ambulances.

The St. John Ambulance attendants described to hospital staff the patient's unstable condition on the trip to Strathroy. For a short period, Cecil Bernard George had seemed to lose his vital signs. They had had difficulty locating his pulse, he had often been unresponsive, and he had lapsed in and out of consciousness. They had not immobilized his neck, and they had been unable to obtain his blood pressure.

Dr. Marr, the only physician on duty in the emergency department that evening, had been assessing Nicolas Cottrelle for less than five minutes when Cecil Bernard George appeared in the trauma room. She turned her attention to Mr. George, who seemed to be in more serious condition.

Neither the OPP nor the St. John Ambulance attendants told Dr. Marr how Cecil Bernard George had been injured. As the hospital witnesses stressed, it is important for emergency staff to know the cause of the injuries. There was a cut on Mr. George's head and a gash on his lip. He had pain in his abdomen, back, forearm, and shoulder. Mr. George clearly had an impaired level of consciousness, he was disoriented, and he was in a confused state. His eyes remained closed unless hospital staff stimulated him. He did manage to communicate that he had been beaten. He gave monosyllabic answers to questions, and he was generally incoherent and unfocused. Dr. Marr thought his behaviour was consistent with having sustained a concussion.



When Dr. Marr examined Cecil Bernard George, his vital signs were normal. His blood pressure, pulse, and respiration were stable and in the normal range. Despite the observations and comments of Ms. Bakker-Stephens and Mr. Morgan, Dr. Marr did not think Mr. George had lost his pulse or respiratory functions in the St. John Ambulance vehicle. It was highly unlikely a patient would temporarily lose his pulse and respiratory functions and then spontaneously regain them without medical intervention. Dr. Elizabeth Saettler, who examined Mr. George later that evening, agreed.

Because the St. John Ambulance attendants reported that the patient's pulse had been unstable on the trip to the hospital, Dr. Marr was concerned that there was internal bleeding. Mr. George had pain and tenderness in his abdominal area, and multiple soft tissue injuries.

Hospital staff started the intravenous and stabilized his neck and back. Dr. Marr ordered x-rays and blood tests.

Dudley George was wheeled into the trauma room three to four minutes after Cecil Bernard George. Dr. Marr's attention turned to an Aboriginal man who was severely injured as a result of a gunshot wound.

Ms. Bakker-Stephens remained with Cecil Bernard while hospital staff focused their efforts on Dudley George. Because of Cecil Bernard's visible head injuries and because he had lost consciousness, Ms. Bakker-Stephens agreed that a C-collar should have been placed on his neck in the St. John Ambulance. In fact, hospital staff were critical of Ms. Bakker-Stephens for not stabilizing his neck with a collar on the trip from Forest to Strathroy.

After remaining with Cecil Bernard George for less than fifteen minutes in the trauma room, medical staff stopped trying to revive the patient to whom they had been attending. Ms. Bakker-Stephens could see that the monitor attached to Dudley George's body had a "steady ... flat line" — Dudley George was dead. I discuss the resuscitation efforts by medical staff at Strathroy Hospital in the following chapter.

After resuscitation efforts had ceased and Dudley George was pronounced dead, Dr. Marr, accompanied by Dr. Saettler, returned to care for Cecil Bernard George. It was about 12:20 a.m. Ms. Bakker-Stephens left to complete a St. John Ambulance report.

As Dr. Saettler approached the patient, she noticed a large amount of blood on the stretcher. She saw lacerations on Cecil Bernard's scalp, a cut lip, and bruises on his forehead, chest, and forearm. He continued to lapse in and out of a drowsy state, he was generally unresponsive, and in the words of Dr. Saettler, "he didn't know where he was and wasn't responding appropriately to questions."

He had a diminished level of consciousness. Dr. Saettler considered this a significant head injury.

Dr. Saettler tried to elicit information on the cause of the injuries. She tried to “draw out” information from Cecil Bernard George and Nicholas Cottrelle. They were clearly hesitant to respond. Both were quiet. Dr. Saettler “felt ... that they might not have a level of trust that would allow them to volunteer information.” She thought their reluctance to speak could be attributable to their Aboriginal culture.

Mr. Cottrelle then said that nine policemen had beaten Cecil Bernard George with sticks. Mr. George told Dr. Saettler that he had been kicked in the abdomen.

Dr. Saettler thought Mr. George might have injuries to his liver and spleen from the kicks to his abdomen. She decided that he should undergo a CAT scan of his abdomen if there was any compromise in his blood pressure.

Dr. Saettler considered Cecil Bernard’s injuries “consistent with the description given by Nicholas Cottrelle ... [I]t appeared to me that he had been struck with sticks or truncheons by the police.” He had injuries to the outside of his forearm consistent with defensive actions. He had a series of bruises on the side of his baby finger and outer forearm, typical of someone who has raised his arm to ward off blows. Although she could not specify a precise figure, in Dr. Saettler’s view, Mr. George had warded a fair number of blows with his forearm. The hospital physician also made this observation:

... [H]e didn’t have any fractures of the metacarpals, “boxer’s fractures” they’re called, which might occur in a fistfight where he was at least an equal participant or ... had thrown some punches.

She subsequently mentioned these observations to the Special Investigations Unit (SIU).

Dr. Saettler sutured his lip. She did the blood work, which revealed that he had no alcohol in his blood. Alcohol intake can affect a person’s consciousness.

Within thirty to sixty minutes of his arrival, Cecil Bernard George’s neurological condition had improved. He became more alert, his eyes were open for greater periods of time, and he responded to questions more consistently.

After stitching his lip and satisfying herself that his condition was improving, Dr. Saettler left the patient. It was fortunate, she thought, that Mr. George’s neurological condition had improved. Strathroy Hospital was not equipped to further assess his injuries had his situation deteriorated. The hospital did not have the equipment to do a CAT scan of the brain. Mr. George would have been



transported to a hospital in London had his medical condition not improved. Dr. Saettler said:

... [W]ith regard to Cecil George, I think that in ... light of what happened ultimately, we had adequate resources to manage his care and to assess him ... [I]f he had not improved in that way, we certainly were ill-equipped to assess his injuries further, that is we don't have access to CT scan of the brain. Or if his abdominal injuries had been more serious, ... well, we could have adequately managed those, but the neurologic injury, I felt relieved that he had improved sufficiently and didn't require a CT.

Hospital staff monitored Mr. George's neurological condition for the next twenty-four hours.

## 17.6 The St. John Ambulance Report

Ms. Bakker-Stephens, relieved of her duties, proceeded to complete a patient report with the assistance of her colleague Glen Morgan. She thought Cecil Bernard George should have been transported to the hospital in a Ministry of Health ambulance with better medical equipment and trained staff:

His injuries were beyond our limitations as first-aid responders, and we really didn't have the equipment or the newer ambulance either ... [H]e should have gone into a Ministry of Health ambulance and be[en] taken by emergency medical ... assistants ... who have the experience, who have the extra training. We were just volunteers and we don't have all the training they do ...

Mr. Morgan and Ms. Bakker-Stephens had a debriefing session with Mr. Harding, standard procedure at St. John Ambulance, particularly for traumatic events. Ms. Bakker-Stephens was concerned that she had not been able to detect the patient's pulse. Peter Harding assured her that it was difficult, because of vehicle and road noise, to detect a patient's vital signs, particularly a pulse, even for experienced people who are well trained in first aid. Mr. Harding did not think Cecil Bernard George's heartbeat had in fact stopped from his discussions with Ms. Bakker-Stephens.

After reviewing the September 6 event with Mr. Harding, Ms. Bakker-Stephens altered the patient report of Cecil Bernard George. Initially she wrote that there were no vital signs, which she later amended to "unable to locate V/S [vital signs] due to noise."

At the hearings, Ms. Bakker-Stephens explained that her difficulty in detecting Mr. George’s pulse could have been attributable to several factors: road noise, the rattling of the St. John Ambulance vehicle, or possibly that the patient had gone into shock:

It could be a multitude of reasons. There was road noise, the ambulances that we had were quite old ... and it was rattling a lot and when a patient does start to go into a bit of shock, which I believe he did, the pulse gets really weak and thready, so it’s hard to feel. And, of course, respirations will slow down as well. It was just his body’s way of protecting itself.

Because of her lack of skills and training, transporting Cecil Bernard George to Strathroy Hospital was a terrifying experience for Ms. Bakker-Stephens. This was the first time she had transported an injured person to hospital. She had never worked with patients in trauma or shock, and she had never taken the vital signs of an injured person. When asked by counsel whether this was “a pretty scary experience,” the former St. John Ambulance volunteer replied, “[T]hat’s an understatement.”

As Dr. McCallum, the expert witness in emergency medicine and other medical witnesses stated, it would have been beneficial if advanced care paramedics had been available in the OPP Ipperwash operation. I agree with Dr. McCallum that the availability of advanced care paramedics at Ipperwash would have ensured that people injured in the confrontation on the night of September 6, 1995, received the appropriate level of medical care on their ambulance trip to the hospital.

## **17.7 Interaction between Cecil Bernard George and the OPP at the Hospital**

Constable David Boon was ordered by Detective Sergeant Richardson to guard both Nicholas Cottrelle and Cecil Bernard George. He moved between their respective treatment rooms. Constable Boon recorded in his notes that at 12:41 a.m., Cecil Bernard George said, “You might as well put me in jail now cause I’m going there anyway.”

Cecil Bernard George’s wife, Roseanne Bressette, and a relative, Jessie George, visited him at the hospital at 2:00 a.m. on the morning of September 7, 1995. He was taken to the intensive care unit shortly after 3:00 a.m. Constable Boon received instructions from his superiors that Mr. George was to have no further visitors.



Later in the morning, Cecil Bernard George became more talkative. Constable Boon noted that, from time to time, Mr. George sat up and mumbled unintelligibly. At 8:15 a.m. on September 7, 1995, he sat up in bed and said, “I know I was arrested. I’m ready for the justice system. Why am I here?” Constable Boon told him he was there because he needed hospital care. Mr. George replied that he was all right. When he appeared to be more lucid, Constable Boon told him he was being charged with attempted murder<sup>1</sup> and read him his rights to counsel.

During Cecil Bernard George’s hospital stay, police officers remained within close range. There were generally two police officers in his hospital room at all times.

Cecil Bernard George was ultimately charged with a number of criminal offences, including assault and mischief. While in hospital, Mr. George tried to engage the officers in a discussion, but they refused to respond. He recalls telling the officers, one of whom was female, that he was sorry if anyone was hurt. Mr. George wanted the police to know that First Nations people are different from how they are portrayed to members of the public.

During his hospital stay, the SIU took photographs of Mr. George’s injuries. He was disappointed that the police did not apologize to him for the injuries to his head, legs, lip, arms, and chest.

At 4:35 a.m., Identification Constable P.J. Evans arrived at Cecil Bernard George’s room and asked him to consent to a gunshot residue test on his hands. The police tried to test Cecil Bernard George’s hands for traces of gunpowder. Mr. George refused to comply with police requests to place his hands on a device.

Cecil Bernard George was at Strathroy Hospital for less than two days, at which time the OPP transported him to Sarnia jail.

In 1997, there was an SIU investigation of police conduct regarding Cecil Bernard George and the confrontation outside Ipperwash Park on the evening of September 6. The conclusion of the investigation was that the police did not use excessive force against Cecil Bernard George during the confrontation. As I stated in Chapter 14, in my view, the injuries to Cecil Bernard George’s head and face were excessive.

## **17.8 Dr. Marr’s Assessment of Mr. George’s Injuries**

On September 8, 1995, Dr. Marr did a further assessment of Cecil Bernard George. Although the x-ray results showed he did not have a fracture in his neck or limbs and there were no internal injuries in his abdominal area, Mr. George had

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<sup>1</sup> Cecil Bernard George in fact was not charged with attempted murder.

extensive bruising on his body. It appeared to Dr. Marr that “he had been hit quite hard many times with a blunt object.” Many of the bruises were linear and elongated, which “seemed to be consistent with the history of his being beaten with a baton” or long object.

Dr. Marr prepared a report of Mr. George’s condition. She wrote that the forty-one-year-old First Nations patient had “received multiple blunt wounds to the head, face, chest, abdomen and limbs” at Ipperwash in an interaction with police. There were twenty-eight areas of tenderness, which represented separate applications of force. Some of the injuries, she said, could have been caused by a kick of a boot. He had multiple soft tissue injuries that were consistent with a serious beating. He had suffered severe head trauma. She thought the injuries on the back of Mr. George’s head likely caused the impaired consciousness.

Cecil Bernard George was discharged from Strathroy Hospital at about 4:30 p.m. on September 8, 1995. He had pain in his head, right forearm, and other parts of his body. At the time of his discharge, Dr. Marr thought there was a possibility he might have subtle brain damage.

Mr. George had clearly suffered a major head injury at the Ipperwash site and possible internal injuries. He was at risk of internal bleeding and swelling of the brain. Yet non-paramedics transported him in a St. John Ambulance that lacked essential medical equipment to monitor his cardiac activity, blood pressure, and pulse. In Dr. Marr’s view, his injuries were “potentially life-threatening.” Both she and Dr. Saettler thought Cecil Bernard George should have been transported to hospital with qualified paramedics in a properly equipped ambulance. Such individuals would have known that Mr. George’s neck should have been immobilized on the trip to the hospital.

I agree that Cecil Bernard George should not have been transported to hospital in a St. John Ambulance after he had sustained injuries in the OPP confrontation with the Aboriginal people at Ipperwash. Properly trained paramedics and the necessary medical equipment in provincial ambulances at that time should have been available to Mr. George on his ambulance trip to Strathroy Hospital. Also, information on Cecil Bernard George’s medical condition should have been communicated to Strathroy Hospital in advance of the arrival of the patient. Finally, the police should have alerted hospital staff of the cause of the injuries sustained by Cecil Bernard George.





## SEPTEMBER 6, 1995 — UNSUCCESSFUL ATTEMPTS TO RESUSCITATE DUDLEY GEORGE

### **18.1 Dudley George is Transported to Strathroy Hospital by His Siblings and a Teenager**

As I discuss in Chapter 14, fourteen-year-old J.T. Cousins was in Ipperwash Provincial Park on the evening of September 6. He saw the police in “riot gear” approach the park in formation, with shields and batons. He also witnessed the altercation between the OPP and Cecil Bernard George in the sandy parking lot.

J.T. Cousins was also in the sandy parking lot when the OPP started to fire their guns at the occupiers and he watched Dudley George fall to the ground after he was shot. With Dudley’s brother Pierre and sister Carolyn, he drove with Dudley George to Strathroy Hospital. J.T. Cousins sat in the back seat of the car with Dudley, applying pressure to lessen the bleeding from his fatal wounds.

What follows is a description of the trip with Dudley George to Strathroy Hospital on the night of September 6.

Carolyn George had been cooking a meal in the kitchen in the built-up area. She drove to the park after dark to offer food to her son, Glen (Bressette), and to her brother Dudley. Robert Isaac approached them soon after her arrival and said they “needed help” and “more guys” because “something was happening.” Carolyn George then saw police officers in the sandy parking lot march “shoulder to shoulder” toward the fence of the park.

Carolyn George quickly decided to return to the built-up area to get help for the occupiers at the park. She approached the main gate of the army camp and saw Marlene Cloud sitting on a curb, “all pale and shaken up.” She did not see any men present. On Carolyn’s suggestion, Ms. Cloud got into her car; they saw a dump truck head toward the park and they then drove in the direction of the park.

Fourteen-year-old J.T. Cousins was at the park and heard shots fired. J.T. Cousins saw Dudley George fall to the ground and struggle to rise. He ran into the parking lot and watched other Aboriginal men rush to Dudley, pick him up, and carry him into the park.

The men placed Dudley George into the “OPP WHO” car. J.T. Cousins immediately climbed into the back seat because he “was scared for Dudley.” The fourteen-year-old applied pressure to Dudley’s wounds, which J.T. described as



below his heart. Robert Isaac and Clayton George drove them to the barracks through the inner road parallel to Army Camp Road.

As mentioned, David George placed a 911 call from the pay phone in the park. He told the 911 operator that two people had been shot and he asked for ambulances. That 911 call was received at approximately 11:12 p.m. by Wallaceburg Ambulance Communications Centre and communicated to ambulance dispatch. David George hung up before the operator, police, or ambulance dispatchers could determine the precise location from which he called, and no ambulance was dispatched.

As they drove to the barracks, Dudley George was struggling to breathe but appeared to be conscious:

He looked at me and he smiled and he was just gasping — like having real long deep breaths of air.

J.T. Cousins was “just hoping that he wasn’t going to die.”

Carolyn George and Marlene Cloud did not make it to the park. Several cars passed them as they travelled on “Inner Drive,” the road parallel to Army Camp Road. Carolyn George decided to turn her car in the opposite direction and followed the cars to the built-up area. As she arrived at the gate to the built-up area, Carolyn was told her brother Dudley had been shot.

By this time, Dudley had been transferred to his brother Pierre’s car. Robert Isaac asked for a woman to accompany Dudley to the hospital, and Carolyn immediately climbed into the passenger seat of Pierre’s white car. When she turned to the back seat, she saw Dudley in an unconscious state. J.T. climbed into the back seat of the car.

As they headed to the highway on the way to Strathroy Hospital, the OPP did not intercept them. Pierre George’s white car did not have a licence plate.

J.T. Cousins did not notice any ambulances in the area as they left the army camp.

Carolyn and Pierre George instructed J.T. to continually talk to Dudley to keep him awake and to try to help him retain consciousness. J.T. tried to keep Dudley in an upright position to prevent him from choking on his blood. He placed pressure on Dudley’s wounds and concentrated on Dudley’s breathing.

J.T. Cousins used his sweater to apply pressure to Dudley’s wounds as they drove to Strathroy Hospital. Dudley started to shake and looked like he was going into deep shock. The fourteen-year-old kept talking to him. He said:

... [H]is eyeballs were going to roll back into the head, and then I’d just tell him, “It’s going to be okay. You’re going to be okay. We’re soon going to be at the hospital. Everything’s going to be okay.”

Dudley George did not say anything to J.T. Cousins. Dudley was struggling to breathe. As J.T. Cousins said, he was “trying to get his air,” he was “like choking on his blood.”

## **18.2 Arrival at the Farmhouse of Hank Veens — Unexpected Flat Tire**

Pierre George travelled at a high speed toward the hospital. They proceeded to Northville Road, and then to Nauvoo Road. The car tire unexpectedly went flat. They pulled into the first farmhouse, owned by Hank Veens and his wife, Mary. Carolyn ran to their door to ask if she could use their phone to call an ambulance for her severely injured brother.

The Veens had been in bed for fifteen to thirty minutes when they heard a car “thumping down the road” and enter their laneway. Hank Veens rolled over and said to his wife, “[T]his car’s got a flat tire.” There was “pounding” on the door. Mr. Veens opened the door and saw Carolyn and Pierre George, who looked anxious. They said their brother had been shot, and they needed an ambulance. Hank Veens ran to his phone and “dialled 911 as quick as possible.”

Mr. Veens, with the assistance of his wife, told the 911 operator that some people had arrived at his home and wanted an ambulance for a person wounded by gunshot. The call was made at 11:27 p.m. He gave his 6840 Nauvoo Road address. The operator asked for the location of the wound, to which Mr. Veens replied: “[I]n the chest, around his heart.” The Veens were assured that an ambulance was “on the way.” They remained on the line with the 911 operator. An ambulance was dispatched to the Veens’ residence at 11:30 p.m. and was en route by 11:33 p.m.

Hank Veens thinks he told Carolyn and Pierre George to park their car at the end of his long laneway to meet the ambulance. Carolyn George confirmed that they went to the road at the end of the Veens’ laneway and “sat there and waited.” Carolyn reminded J.T. Cousins to keep pressure on Dudley’s wounds and not to “let up.” They waited for about five minutes, which “seemed like forever” before deciding to go to the nearest intersection of Nauvoo Road and Egremont Road (also known as County Road 22).

Carolyn George returned to the house a couple of times to ask if the ambulance would soon arrive. Mr. Veens said that the 911 operator had assured him the “ambulance was coming.” Mary Veens gave the George family some ice cubes and clean cloths to apply to Dudley’s gunshot wounds.

Mr. Veens decided to go out to the laneway to ask if he could be of any assistance while the George siblings and J.T. Cousins waited for the ambulance. Mary Veens remained on the telephone with the 911 operator. To Mr. Veens’ surprise,



the white car and its passengers were gone. Approximately twelve minutes had lapsed since Carolyn and Pierre George had knocked on Mr. Veens' door asking for help.

At 11:38 p.m., Mr. Veens returned to his house and told the 911 operator they had left and that "they must be going to the hospital." He assumed the operator would know the car was travelling to Strathroy Hospital as it was the closest hospital from his home, an approximate twenty to twenty-five-minute drive.

After the 11:38 p.m. call with Mr. Veens and ambulance dispatch, the dispatcher, Geoffrey Connors, notified the ambulance that was en route to 6840 Nauvoo Road that the car containing the wounded person had left the Veens' but asked the unit to continue toward Nauvoo Road. Malcolm Gilpin and Cesare DiCesare were in the ambulance. Three minutes later, at 11:41 p.m., Mr. Connors cancelled the ambulance call to Nauvoo Road, and advised Sergeant Cousineau that the vehicle had left the Veens' home. One minute later, at Sergeant Cousineau's request, Mr. Connors called the Veens back to ask whether the people who came to his house had appeared to be armed. Mr. Veens responded that they had not.

Mr. Veens expected the ambulance to arrive at his house within ten minutes. This was based on past experience, when he had called an ambulance for one of his workman who had fallen from a wagon. The ambulance had arrived at his house on Nauvoo Road in about ten minutes. Had the ambulance been dispatched from Watford, Mr. Veens maintains it should have arrived within six or seven minutes. Mr. Veens believes that the travelling time for an ambulance from Forest should have been slightly more than ten minutes.

Carolyn George estimated that the drive to Strathroy Hospital from the army camp was forty-five minutes, and that they had travelled half the distance by the time they reached the Veens' house. They had anxiously waited for about five minutes at the intersection of Nauvoo and Egremont Roads, and then decided they must make their own way to the hospital to try to save Dudley's life:

It was almost like we realized that no one was coming to help. And Dudley was just going to die if we sat there. So we decided to go ahead to at least try and get there. Flat tire or not. ... we didn't want to just sit there and let him die.

Dr. Andrew McCallum, who later reviewed the medical care Dudley George received, concluded that Pierre and Carolyn's decision not to wait for the ambulance and to take their brother directly to the hospital themselves was likely the best decision, under the circumstances. He said that transporting the patient to the

hospital as quickly as possible was the most important consideration, given the nature and severity of Dudley George's injuries.

Pierre George drove toward the hospital in his disabled car. As they approached the Town of Strathroy, Carolyn and Pierre noticed police cars. The OPP followed their car. Although Pierre was anxious, he thought the police would assume they were making their way to the hospital and did not think the police would intervene until they reached their destination. Pierre George continued driving to the emergency entrance of Strathroy Hospital. J.T. Cousins believed at that time that Dudley's heart was still beating.

On the trip to the hospital, Dudley George had been gasping for air. When they arrived at the hospital, Dudley's eyes were rolling around. J.T. continued to reassure Dudley that everything would be okay: "I kept talking to him, telling him it's going to be okay."

### **18.3 Arrival at Strathroy Hospital and the Arrest of Carolyn George, Pierre George, and J.T. Cousins**

As Dudley George's family members were making their harrowing journey to Strathroy Hospital in Pierre George's white car, police officers were converging on the hospital.

At 11:20 p.m., A/D/S/Sgt. Mark Wright instructed Detective Constables Speck and Dew to drive to Strathroy Hospital from the OPP Forest Detachment to arrest a male for attempted murder. He had a gunshot wound and had been picked up by an ambulance at Army Camp Road and Highway 21. He was later identified as Nicholas Cottrelle. Mark Wright assumed that Nicholas Cottrelle had been involved in the altercation with police on East Parkway Drive.

While Detective Constables Speck and Dew were travelling to Strathroy, a call came in to the Forest Detachment about an incident at a private residence on Nauvoo Road. A white car with a flat tire had arrived at a house and one of the passengers told the residents (the Veens) that someone had been shot and that medical care was required. After a short time, they had left the area.

At 11:40 p.m., A/D/S/Sgt. Wright instructed Detective Sergeant Richardson to find the car and to arrest the occupants for attempted murder. A/D/S/Sgt. Wright told Detective Sergeant Richardson that the car had failed to stop at a checkpoint, and that the car might have been involved in the confrontation in the sandy parking lot.

A/D/S/Sgt. Wright called out a number of other police officers because the car and its passengers were expected at Strathroy Hospital, and he thought it was prudent to get as many "detectives" to that scene as quickly as possible.



Detective Sergeant Richardson asked Detective Sergeant Bell to help him locate the white car. They took County Road 12 out of Forest to Nauvoo Road to the house where the white car had stopped to seek medical assistance. The car was gone. The OPP officers did not speak to the residents (the Veens), and therefore did not receive any other information about the passengers in that car.

Detective Sergeants Richardson and Bell continued toward Strathroy Hospital along the route they believed the car would take: Nauvoo Road to Highway 402 to Highway 81. It was their intention to intercept the vehicle. If they found an individual requiring medical attention, they would either provide first aid or arrange for Emergency Medical Services (EMS) to transport the individual to a hospital.

Detective Constables Speck and Dew arrived at the hospital around 11:47 p.m. While they were waiting at Strathroy Hospital, A/D/S/Sgt. Wright told them by telephone that a white car with a flat tire with several Aboriginal people, including someone with a “sucking” chest wound, was on its way to the hospital. He instructed the officers to arrest the occupants of the vehicle for attempted murder. Wright believed that OPP officers had been “shot at” and “almost run over” in the altercation and had returned fire into a car and a bus. Shortly after the confrontation, a vehicle had appeared on Nauvoo Road en route to hospital with a person suffering from a gunshot wound. In A/D/S/Sgt. Wright’s opinion, “reasonable and probable grounds existed to draw the inference that that [wounded] person ... and all the other individuals in that vehicle [were] involved in ... attempting to run over the OPP officers or firing upon” them.

Although Mark Wright knew that the car travelling to Strathroy Hospital was white, he made no attempt to determine the colour of the car that had been involved in the confrontation outside Ipperwash Park. Nor did Detective Sergeant Richardson verify whether a white car had been involved in the sandy parking lot incident. A/D/S/Sgt. Wright acknowledged at the hearings that he would not have had reasonable and probable grounds to arrest the individuals in the white car if he had known the car involved in the incident was a different colour than the one en route to Strathroy Hospital.

After speaking to A/D/S/Sgt. Wright, Detective Constable Dew contacted the Chatham Communications Centre at 11:51 p.m. and requested a two-man car at the hospital for security purposes:

We’re gonna have apparently a second gunshot victim on his way to the hospital here coming in a private car ... We don’t know how many ying yangs are gonna be in the car. Can you call London and have them send a Strathroy unit, maybe a two man, to stand out here in case we run into some trouble here?

A sergeant at the London OPP Communications Centre called the hospital at 11:52 p.m. and spoke to Detective Constable Dew:

... [I]t's a white vehicle with a flat tire. There's numerous Indians in it apparently, besides the victim that's been shot in the chest ... We've got three officers heading to the hospital from the Strathroy Detachment. And we've also asked Strathroy PS to send a car over because ... they're figuring there's a possibility of [trouble]. And they're figuring that there could be weapons in this white vehicle too.

At 11:55 p.m., Constable Tracy Dobbin and her partner were dispatched to Strathroy Hospital to arrest a "carload of Natives" en route from the Ipperwash Park area in a white vehicle with a flat tire. They were told an injured person was in the car and it was possible weapons were in the vehicle. Constable Dobbin had little experience as a police officer. The evening of September 6 was only her second shift as an OPP officer. As a probationary constable, she was partnered with an OPP "coach officer." They arrived at the hospital at 12:04 a.m.

Detective Sergeants Richardson and Bell had no success locating the white car and arrived at Strathroy Hospital at 12:02 a.m. Following a conversation with Detective Sergeant Richardson, Detective Constable Dew spoke with Chatham Communications Centre at 12:04 a.m. and made the following request:

Can you guys be aware of any stolen cars up in the neighbourhood, the northeast Lambton County? And can you drop a line to London OPP Comm. Centre and have them alert anybody out on the road for stolen vehicles? We can't find this white car. It hasn't been spotted on its way to the hospital yet ... White car with a flat tire. So they may be trying to boost another vehicle to get their buddy here.

Detective Sergeants Richardson and Bell set out again at 12:05 a.m. to retrace their steps. At about 12:08 a.m., they returned to Highway 81 and saw a white Chevrolet driving south toward them. Sparks were flying off the car rim from the flat tire. They were a couple of kilometres from the hospital. The officers turned around to follow the car. As they went over the Highway 402 overpass, a marked Strathroy police cruiser pulled in front of Richardson and Bell's unmarked car and also followed the white car. Detective Sergeants Richardson and Bell did not attempt to stop the white car. They considered it prudent to continue because they were within minutes of the hospital, which was the best place from a safety standpoint to stop the vehicle and the best place to get assistance.

As mentioned, minimal notice was given to the doctors and nurses at Strathroy Hospital regarding Ipperwash-related injuries. Dr. Marr, the emergency



physician on call, was notified of the possibility of Ipperwash-related casualties some time between 11:00 p.m. and 11:30 p.m. that evening, but was not given any details. Jackaline Derbyshire, the charge nurse in the emergency department that evening, received a call from the London Ambulance dispatch at about 11:40 p.m. advising the hospital to expect two gunshot wound injuries, one arriving by ambulance and one arriving possibly by car. She was not advised of the severity of the gunshot wounds, and thought that a patient coming by car would not be seriously wounded.

Nurse Derbyshire received a telephone call from the London OPP about fifteen or twenty minutes after the call from the London Ambulance dispatch. The OPP notified her that officers would be arriving at the hospital for security reasons. They did not explain why security was necessary, although she understood their concerns were in relation to the Ipperwash incident.

As the white car approached Strathroy Hospital, several police cruisers and officers were waiting, including Constable Tracy Dobbin, Constable David Boon, and Detective Constable Mark Dew. Detective Constable George Speck was inside the hospital.

As Pierre George drove the car to the hospital's emergency entrance, Detective Sergeants Richardson and Bell, as well as two officers in a Strathroy police cruiser, surrounded the white car.

Carolyn George got out of the car and asked for a stretcher. As she turned to open the back door to attend to her severely wounded brother, Dudley, she realized that no one was responding to her request. In an insistent tone, Carolyn George demanded a stretcher.

Constable Dobbin approached the vehicle and opened the rear passenger door. She saw the injury to Dudley George's chest. She assumed he was dead. One of the reasons she opened the car door was to look for weapons, but she did not see any. Detective Sergeant Richardson instructed Constable Dobbin to arrest the female passenger. Constable Dobbin shut the rear door without seeking medical help for the severely wounded man.

Carolyn George saw a police officer at the hospital doors nod his head. Police officers grabbed her arms and put her "right down on the ground." Carolyn's face "went right through some shrubs" and her glasses were "knocked off." Carolyn George was trying to ask them to let her see her brother. Carolyn George struggled with the officers and screamed for medical help for her brother, Dudley George.

Constable Dobbin testified that she and another officer tried to restrain Carolyn George so that she could be handcuffed and arrested. The officers

decided to put Carolyn George on the ground to gain control over her. Constable Dobbin testified that as they were doing this, she, another officer, and Carolyn “got bumped from behind,” likely by Constable Boon, and fell forward into the bushes and onto the ground. Constable Dobbin thinks Constable Boon was trying to control Carolyn George. During the struggle, Constable Dobbin heard Carolyn call out for someone to help her brother. Carolyn George yelled that there was an injured person in the back seat of the car.

An officer read Carolyn George her rights and told her that the arrest was for attempted murder.

While officers were arresting Carolyn George, other police officers were holding Pierre George up against a cement wall. Pierre asked what the officers were doing and was told that they were under arrest for attempted murder. When Pierre asked for an explanation for this criminal charge, an officer replied that the first shot came from a white car.

Carolyn and Pierre George were arrested, placed in separate police cruisers, and driven to the Strathroy Police Detachment.

Carolyn George could not understand why she, her brother Pierre, and J.T. Cousins were under arrest when they were simply transporting Dudley, who had been shot by the police, to the hospital to get medical attention to save his life:

... I didn’t understand why they were arresting me in the first place because we were just taking Dudley to the hospital, and then to be handcuffed and they wouldn’t even let me see Dudley. I didn’t know what was going on ...

I was struggling because ... we were attempting to get Dudley out of the car, and they grabbed my arms and I just wanted to get Dudley out and get somebody to look at him ...

To my knowledge, Dudley was still alive when we got to the hospital, and they wouldn’t even help, you know, like bring out a stretcher. I felt like Dudley didn’t — shouldn’t have died.

That evening, paramedic Robert Scott had brought a patient to Strathroy Hospital. While en route, he and his partner received instructions to remain at the hospital after transporting the patient. Mr. Scott was outside the hospital emergency entrance when the white car arrived. After seeing police officers converge on the car, he went back in the hospital. He went back outside after ten to twenty seconds. Mr. Scott expected that someone would instruct him about



whether he should assist the man in the back seat of the car. No police officer said anything to him:

... [E]veryone was to the left of me, concentrating on the lady who they had up against the wall. After she yelled: “My brother. My brother,” I kind of lost track and more tunnel-visioned on the person in the back. Again, as a paramedic, I’m there to assist the sick and ill ... I’m not a police officer at that point. So, anyhow, I look in the back. I step back waiting for someone to tell me to get away from the car, well, wait for someone to tell me to go into the car. No one’s saying anything to me at all.

Robert Scott opened the rear car door, assessed the situation for safety concerns, and saw an unresponsive person on the back seat. He quickly conducted a check of the patient’s ABCs: airway, breathing, and circulation, and for a pulse. He retrieved his stretcher.

Nurse Derbyshire ran outside after the ambulance attendant and said that help was needed on the ramp. The rear passenger door of the car was open and a man was lying across the back seat. She could see he was not breathing. His skin was mottled around the jowls and neck area. Mottled skin has a patchy blue-grey hue and is indicative of deoxygenated blood, which results from a person not breathing or the heart not pumping. There was a pooling of blood around the jowl and neck area, which suggested that blood was no longer circulating. Although Nurse Derbyshire thought he was dead, her priority was to get him into the emergency department. She instructed the ambulance attendants to place the patient on the stretcher as quickly as possible.

Paramedic Scott placed the stretcher next to the car and yelled for help. His partner was among those who responded. Constable Boon also assisted in steady-ing the stretcher. Mark Watt, the attendant in the ambulance that had transported Nicholas Cottrelle to the hospital, had seen the white car arrive. He went to help because he heard people yelling that a person in the back seat had been shot. Mark Watt observed that the patient was unconscious, his colour was poor, and he had a four-by five-inch section of blood on his left upper chest.

It took three to five minutes for the ambulance attendants to transfer Dudley George from the car to the stretcher and wheel him into the trauma room.

J.T. Cousins was deeply affected by the reaction of the police and medical staff when they arrived at the hospital. Dudley was bleeding to death in the fourteen-year-old’s arms. When J.T. Cousins testified at the Inquiry almost ten years later, it was clear he continued to be traumatized by the events of the night of September 6. He claimed that the police locked the hospital doors with a

galvanized chain and a padlock, which prevented medical staff from providing assistance to Dudley George:

I expected the people to come out and help us out. Rather than that, they were all just standing around in front of those glass doors. They couldn't come out because the cops had a galvanized chain with a padlock that went around the doors and they're all just standing there watching ...

They were all inside by the doors. They looked like they wanted to help but couldn't.

J.T. Cousins continues to see the image of the chain and padlock in his nightmares. No other witness at the Inquiry testified to seeing a chain and padlock on the doors. J.T. Cousins agreed that he did not mention this when he was interviewed by the Special Investigations Unit (SIU) in January 1996 or by officials from the Coroner's Office in February 2003.

J.T. Cousins was with Dudley in the back seat of the car while the police were arresting Carolyn and Pierre George. The fourteen-year-old believed Dudley was still alive: "[W]hen the cops took me away ... I could see him just starting to slouch over and fall over on the seat ... He was alive. He would still be alive today if they would have opened up those doors and give us some help." But as I discuss in the section on the medical evidence, Dudley George likely died before he arrived at Strathroy Hospital.

The police officers forcibly removed J.T Cousins from Dudley. J.T. Cousins resisted. He was worried that Dudley would choke on his blood if he fell into a prone position:

I was like trying to help Dudley and ... [the] cops sort of like opened up both doors, and they were dragging me away from Dudley ... and they tried to arrest me and that, and I was squirming around on the ground and I got away from them.

I got back to the car and I was trying to help Dudley and he was sitting up. He was starting just to lean over towards the passenger side of the car, and I was trying to help him sit back up. And the cops got a hold of me and they handcuffed me and they took me and put me in the back of the cruiser ...

They dragged me out of the car ... They grabbed from the legs and around my waist and like my arms ... more or less ripping me from the car.



Detective Sergeant Bell's account of his conversation with J.T. Cousins differs from J.T.'s memories. Bell testified that he asked the teenager to exit the vehicle. Bell asked him what had happened. J.T. stated that Dudley had been shot in his heart, he had been carried to the car, and the four of them had driven to the hospital. J.T. had tried to apply pressure to the wound on the journey to Strathroy.

Detective Sergeant Bell saw blood on J.T.'s hands and on his pants. The OPP officer claimed that J.T. was calm, co-operative, and answered questions without hesitation. He told the officer that there were no guns because the Aboriginal occupiers had agreed there would be no such weapons.

An officer arrested J.T. Cousins. Detective Sergeant Bell acknowledged at the Inquiry that J.T. should have been cautioned about his right to speak to counsel and told that he had no obligation to make any statement to Bell or to other police officers. J.T. Cousins was fourteen years old.

J.T. Cousins was handcuffed and placed in a police cruiser. The police told him that he would be arrested on several charges. J.T. said he tried to kick the officers and the door of the police car.

At the hearings, J.T. Cousins discussed his anxiety in reliving this traumatic experience: "This is a very touchy subject and I just still don't even feel safe talking to you guys or nobody else about this. You guys are bringing up real bad memories for me." J.T. continues to be deeply disturbed by the events he witnessed as a child over a decade ago on September 6, 1995.

Many individuals, such as J.T. Cousins, suffered and continue to suffer serious trauma as a result of the events on September 6, 1995. The Office of the Chief Coroner suggested that the government provide timely access to counselling services for those who experience debilitating emotional and psychological consequences from exposure to or involvement in traumatic events involving the police.

This was the last time Carolyn and Pierre saw their brother, Dudley George, before he was proclaimed dead at Strathroy Hospital. Carolyn George believed Dudley was alive when they arrived at the hospital. The police officers did not give any thought to the fact that hospital staff might wish to speak with the occupants of the vehicle to obtain important information about Dudley George's condition. The police transported Carolyn and Pierre George to jail without giving them an opportunity to provide information to medical staff about their brother. They were not permitted to be near their brother while efforts were made to resuscitate him. And they were not given time to say their final farewells.

Pierre George, Carolyn George, and J.T. Cousins were never charged with any criminal offence related to the events of September 6, 1995.

Inspector Carson played no role in the decision to arrest Pierre George, Carolyn George, and J.T. Cousins on their arrival at Strathroy Hospital. Nor did he have anything to do with the decision to keep them in jail in Strathroy. A/D/S/Sgt. Wright and Detective Sergeant Richardson made those decisions. Shortly after midnight, Inspector Carson learned that the persons who had driven Dudley George to the hospital had been arrested and taken into custody for attempted murder. He also later learned they were not armed. Inspector Carson does not believe he was advised at that time of the identity of the occupants of the car. He is not sure when he learned that the occupants included the brother and sister of Dudley George.

Inspector Carson and Superintendent Parkin spoke at around 12:05 a.m. Carson updated his superior on the events. Superintendent Parkin told Inspector Carson that the car that had transported Dudley George to the hospital should be seized. Based on the information he had been given, Superintendent Parkin thought it was possible the car may have been involved in the confrontation that evening and that it could contain some relevant evidence. Superintendent Parkin also wanted to ensure that enough police were at the hospital “in case a bunch of those Indians go over there and go crazy.” In his testimony at the Inquiry, Superintendent Parkin acknowledged that while his terminology might “not have been the best or most professional,” he was trying to convey the message that it was a “very emotionally charged situation” and there was a potential for further confrontation.

During the Ipperwash Review of February 21, 1996, Inspector Goodall made the following comment:

... [T]here were insufficient people to supply information ... [I]nvestigators found a need to have a better understanding of what had taken place at the shooting — innocent people were placed in jail, due to lack of proper information being passed on.

Chief Superintendent Coles agreed with the concern that innocent people were incarcerated because of a lack of proper information, and he acknowledged “in hindsight” that they “should not have been arrested.” Similarly, Commissioner O’Grady said the arrests were “regrettable.” The OPP Commissioner and the Chief Superintendent testified that there was a lack of communication amongst the police officers who made decisions that night, and that there was “a considerable



amount of confusion as to what had occurred and the activities” in the Ipperwash Park area.

## **18.4 Anthony “Dudley” George at Strathroy Hospital**

Shortly after midnight Dudley George was brought into the emergency department by paramedics Mark Watt, Robert Scott, and Mark Weiss, and the nurse in charge of the emergency room, Jackaline Derbyshire. One of the paramedics performed cardiopulmonary resuscitation on Dudley George as his stretcher was wheeled into the emergency department.

Dudley George was immediately taken into the trauma room. Because of the apparent seriousness of his injuries and condition, most of the medical personnel in the trauma room quickly turned their attention to Dudley George.

It was immediately apparent to Dr. Marr and the nurses who assessed Dudley George that his situation was grave. Nurse Derbyshire, who helped move Dudley George from the car into the emergency department, testified that when she first saw Dudley George, he was not moving, and he did not appear to be breathing. His skin was a mottled, blue-grey colour, which indicated that his blood was not oxygenated or circulating.

Within a few minutes of his arrival at Strathroy Hospital, “Code Blue” was announced over the hospital’s public address system, which indicated that a patient was in cardiac arrest and/or in need of resuscitation of breathing and circulation. Medical staff from other parts of the hospital came to assist with resuscitation efforts.

Dr. Elizabeth Saettler, the general surgeon on call at the hospital, was completing paperwork in another part of the hospital when she heard the “Code Blue” announcement. She immediately joined Dr. Marr in the trauma room to assess and treat Dudley George.

The medical team involved with Dudley George that night consisted of Drs. Marr and Saettler, nurses Glenna Ladell, Marlene Bergman, and Jackaline Derbyshire, and the paramedics who brought Dudley George in from the parking lot. Without delay, the team began working on Dudley George with the hope of resuscitating him.

The physicians focused their assessment on the bullet wound to his left shoulder or collarbone area, which was one centimetre in diameter. Dudley George did not have significant amounts of blood on his skin or clothing. Dr. Marr concluded that he was bleeding internally, and that a bullet had punctured a major blood vessel in his chest. They were unable to find an exit wound for the bullet.

Oxygen was pumped into Dudley George’s airway through a mouth mask. Three minutes after his arrival in the emergency department, Dr. Marr inserted a

tube into his airway to push air deeper into his respiratory system. When she listened to his lungs; however, Dr. Marr could not hear this air move into his lungs.

Because of the suspected internal blood loss, two intravenous lines were inserted to pump fluid to expand plasma and replace blood volume. Medical personnel hoped this added blood volume would stimulate his heart to start pumping again and provide circulation to the rest of his body. A telemetry strip was attached to his chest to discern any electrical activity in his heart. The paramedic continued cardiopulmonary resuscitation. Dudley George's lungs and heart did not respond to any of the efforts by the medical team to restart his circulation and breathing. Dr. Marr described Dudley George's condition:

He had no signs of life ... He had no pulse. On [listening to] his heart, there were no heart sounds. He had no air movement; no air entry into his chest, no movement of his chest. His pupils were fixed and dilated, his corneal reflexes were absent ... When we put on the telemetry to see if there was any electrical cardiac activity, it was a flat line.

Dr. Marr explained that even when a person's pulse cannot be detected, if the person is alive, electrical activity should be detectable in the heart. But there was no such electrical activity in Dudley George's heart after his arrival in the emergency department, despite efforts of the medical team to resuscitate him.

As they were attempting to resuscitate Dudley George, Dr. Saettler and Dr. Marr discussed the possibility that the patient suffered from either a tension pneumothorax (a condition where the chest cavity fills with air), or a tension haemothorax (where the chest cavity fills with blood). Both conditions create pressure in the chest cavity, and prevent normal circulation of blood and air in the heart and lungs. Drs. Saettler and Marr testified that the only way to relieve either condition is to insert a chest tube between the ribs into the chest cavity. They elected not to do so because they believed there was no prospect that Dudley George would be successfully resuscitated. In other words, Dudley George had died.

At 12:20 a.m. in the early morning hours of September 7, 1995, Dudley George was pronounced dead by Dr. Marr at Strathroy Hospital.

In Dr. Marr's opinion, Dudley George was dead upon his arrival at the hospital. His extremities were cool to the touch, his pupils were fixed and dilated, and there was no discernible electrical activity in his heart.

Dr. Marr testified that it takes between five and ten minutes of severe loss of blood flow to a patient's brain for the pupils to become fixed and dilated. Dr. Saettler stated that Dudley George's lack of pupil response and flat cardiogram indicated that there had been at least ten to fifteen minutes of negligible cardiac



output. She was of the view that by that point, brain damage would be significant and probably irreversible, even if resuscitation were possible.

In the opinion of both Dr. Marr and Dr. Saettler, Dudley George's heart stopped at least ten to fifteen minutes (and perhaps longer) prior to his arrival at Strathroy Hospital.

Dr. Andrew McCallum, an expert in emergency medicine who reviewed Dudley George's medical care and records, concluded that it was likely this patient did not have vital signs at least thirty minutes before his arrival at the hospital.

As stated, the physicians treating Dudley George made a decision at 12:20 a.m. to stop efforts to resuscitate him. This decision to stop resuscitation is based on a number of factors. These include whether vital signs are present, whether the patient is conscious, and the cause and timing of the patient's injuries. If the patient has no vital signs and is not conscious, it is important for physicians, in deciding whether to continue to resuscitate the patient, to know how long these signs have been absent.

Medical personnel had no way of knowing how long Dudley George had been unconscious when he arrived at Strathroy Hospital, how long vital signs had been absent, or when he had been injured.

While she was assessing and trying to resuscitate Dudley George, Dr. Marr asked a nurse to try to obtain more information about Dudley George's condition from the people who had brought Dudley George to the hospital, with no success.

Because he had been brought to the hospital in a private vehicle by family members who were prevented by the police from speaking with medical staff, the doctors and nurses treating Dudley George were compelled to rely exclusively on their own observations. It was not clear to them how long they should continue their attempts to revive him because they did not know how long he had been unconscious or when he had been injured. Dr. Marr testified:

... [W]e did everything that we could ... on the assumption that, perhaps, he had only just collapsed and that there might be some chance of resuscitating him. So, all the measures we took were on the assumption that there could be an opportunity here that we could bring him back.

Detective Sergeant Richardson, who was involved with the arrests of the family members who transported Dudley George to the hospital, testified that medical staff could have contacted the OPP Strathroy Detachment to speak to those family members if they needed medical information about the patient. None of the family members were given the opportunity to speak to medical

staff about their relative's condition. The police officers did not inform the medical staff where the arrested persons were or how to contact them.

In my view, it was inappropriate for the police officers to remove Pierre George, Carolyn George, and J.T. Cousins without giving them an opportunity to speak to medical staff about the nature, timing, and circumstances surrounding Dudley George's injuries. When they made their arrests outside the hospital, the police officers did not know the medical team at Strathroy Hospital would not be able to revive Dudley George. It could well have been the case that those arrested had knowledge and information about Dudley's injuries and/or medical history that may have assisted medical personnel in providing effective and appropriate treatment to him. Were that the case, the officers' decision to arrest and remove the three people and prevent them from communicating with hospital staff could have had dire consequences.

The officers who were involved in the arrests did not find any weapons in the car or in the possession of the occupants. Carolyn George, J.T. Cousins, and Pierre George were not an immediate risk to the officers, medical staff, or the public. From a humanitarian point of view, denying the individuals who had accompanied a gravely injured family member to hospital information about the injured party's condition or the opportunity to speak to hospital staff demonstrated a lack of compassion on the part of the OPP officers.

At the hearings, Commissioner Boniface testified that it was "extremely regrettable" that the family members who had brought Dudley George to the hospital "were not able to ... spend their time with the deceased." Inspector Carson said that it was "very unfortunate" that Dudley George's relatives were not allowed to give any information to doctors about Dudley George or his condition. A/D/S/Sgt. Wright also said the following:

I couldn't imagine how those poor people would feel being in custody when their brother is ... dying and they are pulled away from him. It's a tragic thing that happened ... [I]t's a very unfortunate set of circumstances. And I don't have any problem saying, you know, that I wish I had had more information.

Word of Dudley George's death was communicated to OPP officers in the hospital and, through them, to senior OPP officers, including A/D/S/Sgt. Wright and Inspector Carson.

Shortly after he was pronounced dead, Dudley George's body was removed from the trauma room and placed in a small private room near the front of the emergency department. An OPP officer was assigned to guard the body.



At Dr. Marr's request, nursing supervisor Glenna Ladell at 1:00 a.m. notified the Coroner, Dr. Perkin, of Dudley George's death. At 3:22 a.m., an OPP constable tested Dudley George's hands for gunshot residue, took photographs of his body, and collected his clothing. The results of the test for the gunshot residue were negative.

## **18.5 Arrival of Dudley George's Brother Sam and Other Relatives**

Sam George, Dudley George's brother, received a telephone call from an unidentified person sometime after 11:00 p.m. on the evening of September 6, 1995. He was told that his brother Dudley George had been shot and had been taken to Strathroy Hospital. Sam George woke his wife and both she and their son Donald accompanied Sam to the hospital. They were greeted by a nurse and escorted immediately to a private room, where Sam's sister Pamela George joined them. Having lost other members of his family, Sam George "knew exactly what they were going to tell [him]."

Nurse Ladell told Sam and Pamela George that their brother Dudley George had died. They were escorted into a room where they identified their brother. Sam George asked medical and police personnel to notify him when his brother's body was released.

Sam George and members of the George family asked if they could perform a smudging on Dudley George's body in the small room in the hospital emergency department. Initial concerns raised by hospital and police personnel about the safety of igniting matches in proximity to oxygen lines were set aside. Sam George's son, Donald, went outside the hospital to light the smudge, and the ceremony was performed by family members. The purpose of the ceremony, as described by Sam George, is to "start that cleansing process for that body, and to help that spirit, now that it was going to start to prepare itself to make that journey back to the spirit world."

Sam George and his family left the hospital shortly after 1:00 a.m. for the OPP Strathroy Detachment. It took several requests before he was allowed to enter the building. Once he was permitted to see his siblings, Pierre and Carolyn George, he told them of their brother Dudley's passing.

The Coroner, Dr. Perkin, arrived at the hospital at approximately 1:45 a.m. He examined Dudley George's body. He advised Detective Constable Speck that x-rays were required to determine whether ammunition remained in Dudley George's body. Dr. Perkin and an OPP constable took Dudley George's body for x-rays.

At that time, Ron "Spike" George (Dudley George's cousin), Reg George (Dudley George's older brother), and Warren George Sr. (a cousin to both Dudley

George and Ron George) arrived at the hospital and asked to see the body. Ron George said: “[F]rom an Aboriginal person’s perspective, until you can see the body and touch the body or whatever, at least in my teachings, in my practise, you still kind of don’t believe that it’s true.” Detective Constable Dew told them they could view the body upon its return from the x-ray room.

Dr. Perkin spoke with Ron and Reg George when he returned to the emergency department with Dudley George’s body. He told them that an autopsy would likely be performed the next day, and that he would notify them when the autopsy results were available.

Dudley George’s body was moved from the emergency department to the hospital morgue at 3:00 a.m., where it remained under OPP guard until arrangements were made for an autopsy.

## 18.6 Autopsy of Dudley George

Dr. Gary Perkin, the Coroner, ordered a post-mortem examination or autopsy of the deceased on September 7, 1995. Dr. Michael Shkrum performed the autopsy on September 8, 1995.

Dr. Shkrum, an expert in the field of forensic pathology, obtained information about the circumstances surrounding Dudley George’s death from the document issued by Dr. Perkin that directed the autopsy. Eleven people were present at the autopsy, including Dr. Shkrum, various OPP officers, Special Investigations Unit investigators, a firearms specialist from the Centre of Forensic Sciences, a pathology assistant, two pathology residents, and a radiology technologist.

Dudley George’s body bore evidence of attempts by medical staff to revive him. A tube remained in his mouth as a result of his intubation by Dr. Marr, and intravenous lines were in each arm.

The major trauma to Dudley George’s body was a gunshot wound over his left collarbone. It was evident to Dr. Shkrum that Dudley George’s collarbone was broken when he felt the skin underneath the bullet wound. Dr. Shkrum also observed an abrasion on Dudley George’s right leg.

Once the external examination of Dudley George’s body was complete, an x-ray was taken of his chest and leg. The x-ray revealed projectile fragments in his torso, which confirmed that the wound above his left collarbone was caused by a gunshot. The x-ray also revealed fluid, which Dr. Shkrum suspected was blood, that had collected in the left side of his chest. No metal fragments were found in Dudley George’s leg.

Dr. Shkrum examined all the organs and tissues for abnormalities and signs of disease. The forensic pathologist confirmed information received earlier



through the coroner, that Dudley George suffered from a heart murmur, and from arteriosclerosis with a 75 per cent narrowing and hardening of a major artery leading to his heart. Dr. Shkrum did not believe that either condition contributed to Dudley George's death.

The bullet travelled through Dudley George's body over his left collarbone, through his lungs, and into his back. It travelled from the left to the right side, along a diagonal downward trajectory in the body. The bullet pierced several blood vessels along this path, particularly in Dudley George's lung. The bullet fractured one rib and went through a second rib before it lodged in the soft tissue beneath the skin of Dudley George's back.

Bleeding resulted from each of the injuries inflicted by the bullet. Dr. Shkrum found one litre of blood in the chest cavity, which represented between 15 and 20 per cent of Dudley George's blood volume.

Two fragments of a bullet were removed from underneath the skin in Dudley George's back.

It was Dr. Shkrum's opinion that in light of the path of the bullet, it was not possible that Dudley George was standing up when he was shot, unless the shooter was positioned at a point considerably higher than him (i.e., in a tree or on top of a building). It was possible that Dudley George was in a kneeling or crouching position when he was shot. Dr. Shkrum could not say how far Dudley George was from the shooter when he was shot, beyond noting that he was not at a close enough range for gunshot residue to have been found on his skin.

Dr. Shkrum also examined a wound on the back of Dudley George's right leg. He did not know what had caused this "abrasion." Dr. Shkrum also examined Dudley George's shoes and clothing and found some blood spatter, staining, and holes consistent with his wounds.

Samples of Dudley George's blood and other bodily fluids were taken and submitted to the Centre of Forensic Sciences for testing.

Dr. Shkrum concluded that Dudley George died as a result of a gunshot wound to his upper chest. He lost one litre of blood as a result of the internal bleeding from the wound. Dr. Shkrum stated that blood loss of this magnitude would be sufficient to put a person into a condition of shock.

Dr. Shkrum described the clinical manifestations of shock:

... [B]lood pressure starts to drop as they're losing blood, their heart would start to beat more quickly, trying to pump what blood is left more efficiently throughout the body. They might be breathing more heavily, but eventually a point would be reached ... [where] there wouldn't be enough blood to be pumped effectively throughout the body ... They would begin to feel faint, lose consciousness. The heart

may continue to beat, they may breathe for a period of time, but eventually all these basic body functions would cease because of the lack of blood flow, particularly to the brain, particularly the vital centres of the brain that control breathing and the heart rate.

In Dudley George's case, shock had fatal consequences. Dr. Shkrum concluded:

The mechanism of death, that is, the disturbance that caused [Dudley George's] death, would have been a shock-like state with eventual cessation of blood flow to the brain and eventual cardiorespiratory arrest, that is, his heart stopped beating and he stopped breathing.

Dr. Shkrum believed that Dudley George could have died in "a matter of minutes" after he was shot. As I discuss in this chapter, a review of the autopsy results in 2003 confirmed that the "key factor" in Dudley George's death was the speed at which the blood loss occurred.

Dr. Shkrum prepared the autopsy report. It was issued on March 11, 1996, approximately six months after Dudley George's death.

## 18.7 Review of Medical Care Provided to Dudley George

Some of the Aboriginal witnesses who testified, including family members of Dudley George, questioned whether Dudley George received adequate medical care from the time he was shot until the time he was pronounced dead. Questions were raised as to whether anything could have been done to avert his death.

In 2003, Dr. Andrew McCallum, a Coroner for the Province of Ontario, was asked by the Chief Coroner for Ontario to review the circumstances relating to the death of Dudley George, including the care he received from the time he was shot until he was pronounced dead. Dr. McCallum was called as a witness at the Inquiry to testify about his 2003 review. He also testified as an expert in the field of emergency medicine, including emergency procedures and pre-hospital and in-hospital assessment and treatment of penetrating trauma to the torso. He reviewed the autopsy results and related reports to provide insight regarding the injuries suffered by Dudley George and their contribution to his death.

Dr. McCallum examined several aspects of the care that Dudley George received including:

- a. Dudley George's transportation to the hospital by a private vehicle;
- b. the first aid he received en route to the hospital; and



- c. what factors, if any, may have affected Dudley George's chance of surviving the injuries he suffered.

Doctors Marr, Saettler, and Shkrum also commented on these issues during their testimony.

### ***18.7.1 Transport to Hospital: Time Elapsed and En Route Care***

Dr. McCallum emphasized the importance of transporting a gravely wounded individual to the hospital as quickly as possible for there to be any chance of effective treatment. He commented that

... based on studies that have been done throughout the world ... the most important determinant of outcome ... is time of arrival at the hospital.

So, despite the fact that one might intuitively believe that the intervention of paramedics in these cases would make a tremendous difference, the evidence doesn't support that.

In fact, it seems to be that those who are going to survive are those who arrive at hospital in a very short time.

Dr. McCallum concluded that the decision of Pierre George, Carolyn George, and J.T. Cousins to drive Dudley George to the hospital as quickly as possible, rather than waiting for an ambulance to arrive at Ipperwash, was likely the "correct" decision under the circumstances. In this case, the availability of advanced paramedic support en route may have made no difference. The expert in emergency medicine concluded that the method of transport was "not relevant" to Dudley George's death or any chance he may have had at survival.

### ***18.7.2 First Aid and/or Care En Route to Hospital***

J.T. Cousins applied pressure to the bullet wound during the trip to the hospital. This was the only first aid Dudley George received before he arrived at Strathroy Hospital. Dr. McCallum testified that because the bleeding occurred inside the chest cavity, applying pressure to the bullet entry wound would not stop or slow the bleeding.

Dr. Marr suggested that replacement of fluids by intravenous lines and intubation would need to be started within minutes of the injury in order for the patient to survive long enough to receive the necessary surgical treatment, and even

then it would be difficult to “keep up” with blood loss of the kind Dudley George experienced. None of the emergency paramedics in the region of Strathroy Hospital at the time were capable of starting the type of intravenous lines required under these circumstances.

In Dr. McCallum’s view, providing intravenous fluid to Dudley George while he was transported to the hospital would not necessarily have helped him. Nor did he think that advanced paramedic assistance prior to Dudley George’s arrival at the hospital would have changed the outcome. He referenced a study that indicated that for cases of penetrating wounds and trauma, the care that sophisticated paramedics might be able to provide en route may in fact be harmful to the patient. For example, supplying intravenous fluid prevents the natural constriction of blood vessels and may lead to an increase in blood loss.

Pierre George, Carolyn George, and J.T. Cousins provided the best care to Dudley George in the circumstances by transporting him as quickly as they could to Strathroy Hospital, rather than waiting for medical assistance.

### *18.7.3 Factors That May Have Affected Dudley George’s Chance of Survival*

Both the physician who treated Dudley George and the expert in emergency medicine agreed that he had little or no chance of survival under the circumstances. Dr. Marr testified that the only way for a person suffering from a wound such as his to have any chance of survival was if he was delivered to a major trauma centre within minutes of sustaining his injuries. To successfully treat a major artery puncture in the chest cavity, invasive surgery called a thoracotomy — in which the chest is entered through a large incision — must be performed immediately to halt the bleeding. But even attempts made immediately, in the most sophisticated of trauma centres, would have a limited chance of success. If Dudley George had been brought to a major trauma centre, an emergency thoracotomy might have been attempted. Had he not been in cardiac arrest when he arrived at such a centre, Dudley George would have had only a 16 per cent chance of survival, according to Dr. McCallum, under optimal conditions. A patient who has been in cardiac arrest for less than fifteen minutes has only a minimal — 0.8 per cent to 4.0 per cent — chance of survival. But Strathroy Hospital is not a major trauma centre. The closest centres, Windsor or London, would have taken even longer to reach.

Dr. Marr testified that to successfully treat a person suffering from a 0.5 cm wound to a pulmonary artery, medical staff need to open that person’s chest and close the wound within minutes of the patient sustaining the injury, as blood does not clot in internal chest wounds. She noted there are not many places with the



necessary treatment capabilities for this type of injury. The only patients who could possibly survive injuries such as those suffered by Dudley George would be those brought immediately to nearby sophisticated treatment centres where procedures such as emergency thoracotomies can be performed. Dr. Saettler commented:

I think that the only prospect of resuscitating patients with injuries of this sort is to transport them quickly and directly to a hospital which has a reasonable capability for vascular surgery or thoracic surgery and that *Strathroy Hospital was not equipped to deal with an injury of this nature, even if we had received this patient in a timely fashion.* (emphasis added)

When Dudley George arrived at Strathroy Hospital, medical staff attempted to resuscitate him through cardiac compressions, intubation, and the use of intravenous fluids. In Dr. McCallum's view, the treatment and resuscitation attempts by Doctors Marr and Saettler were appropriate.

Based on the observations of a nurse at Strathroy Hospital of Dudley George's lividity or pooling of blood that occurs in bodies after death, as well as the report from J.T. Cousins about the absence of movement prior to the time the car arrived at the farmhouse, Dr. McCallum estimated that Dudley George had likely been without vital signs and in cardiac arrest for at least thirty minutes before his arrival at the hospital. In these circumstances, Dr. McCallum believed he had no chance of survival.

Dr. McCallum based this opinion, in part, on the fact that only ground transport was available in the region of Ipperwash Provincial Park in 1995. He testified that there was only one air ambulance available in Ontario in 1995. Dr. McCallum took the position that it would not be reasonable to pre-assign an air ambulance to a location based on the mere possibility that multiple casualties might occur. Conceivably, if such an air ambulance was on-site at Ipperwash Provincial Park at the time Dudley George was shot, and was able to transport the patient to London, the trip would take twenty minutes. But it is important to note that air ambulances cannot land at a site after dark unless it is an approved heliport. It was Dr. McCallum's opinion that even under optimal circumstances, such as arrival at a full trauma centre within fifteen minutes from the time of injury and an emergency thoracotomy, Dudley George would likely not have survived his gunshot wound.

In the opinions of Dr. McCallum, Dr. Marr, and Dr. Saettler, Dudley George had died by the time he arrived at Strathroy Hospital and no medical interventions

or attempts at resuscitation would have changed the outcome, regardless of the sophistication of the equipment, the surgery capacity of the hospital, or the training of medical personnel. In the absence of a means to quickly transport Dudley George from the site where he was shot to a hospital with an on-site trauma team, a thoracic surgeon, and medical staff within minutes of his being injured, no medical intervention of any kind would have been effective.





## SEPTEMBER 7, 1995 — THE HOURS FOLLOWING THE CONFRONTATION

### 19.1 The Hours Following the Confrontation: High Anxiety

The hours following the confrontation were filled with anxiety, fear, and uncertainty, a situation that was not helped by the rumours circulating amongst the occupiers and the OPP alike. The OPP by and large retreated to the Forest Detachment (though it maintained a presence in the Ministry of Natural Resources (MNR) parking lot, and the Tactics and Rescue Unit remained on duty all night), while the occupiers stayed within the confines of the park and the army camp. It was estimated that approximately twelve occupiers remained in the park after the police left the area, with the rest retreating to the barracks at the army camp.

When news of the death of Dudley George reached the occupiers, the response was one of grief and anger. The anger on the part of the occupiers manifested itself in actions against park property. Calls came forward from within the group to burn the park store and the park kiosk. Warren George testified that he threw a lit gas bomb at the store. He testified that the gas bomb was a pop bottle filled with gas and had a rag stuffed into the top. He stated that he does not know who made them, but that a lot of people had them and were throwing them at the store. He also witnessed the burning down of the nearby kiosk. While their upset and anger were understandable in the circumstances, the occupiers obviously should not have burned down any of the buildings in the park. As the late Clifford George testified: “For one thing there was no need to burn that building. I was very opposed to that.”

Back in the barracks, there were many men, women and children, some of whom had been involved in the confrontation. The atmosphere was one filled with anxiety, stemming from the fear that the OPP would return and forcibly remove them from the park and army barracks, resulting in possible further bloodshed. They felt isolated, and received no word concerning the intentions of the OPP toward them.

The anxiety felt by the occupiers at the army camp was further heightened by the rumours of injuries and the fate of family members and friends that circulated. David George testified that he was informed that the police had shot Cecil Bernard George in the head, and that young Nick Cottrelle had also been shot. He



was just waiting for the OPP to come into the built-up area to remove them. Others shared his sentiment, and testified that they feared for their lives in the early morning hours of September 7, 1995.

At the same time, the OPP were trying to determine what had happened and how to best contain the potentially explosive situation. At 11:44 p.m. on September 6, Incident Commander John Carson had ordered an evacuation of all local residents from the trailer park on Army Camp Road, directly across from the army camp, to the beach to the west of the park. This area included the nearby cottages located between the park and the Ministry of Natural Resources parking lot. He was concerned that the violence might spread beyond the confines of the general park vicinity to the adjacent cottages. The evacuation proceeded into the early morning hours of September 7.

At approximately 12:20 a.m., Incident Commander John Carson learned from A/D/S/Sgt. Mark Wright that Dudley George had died from his gunshot wound. Inspector Carson notified Superintendent Parkin of Dudley George's death at approximately 12:25 a.m. Superintendent Parkin told John Carson that he would notify the province's independent Special Investigations Unit (SIU), which would investigate the police involvement in the shooting death, and the OPP's own Criminal Investigations Branch (CIB), which would investigate potential criminal activity on the part of the occupiers and, most notably, allegations of attempted murder of members of the Crowd Management Unit (CMU). These would be parallel, but separate, investigations. Superintendent Parkin also informed Chief Superintendent Chris Coles of the incident, and together they went to the command post in Forest.

Knowing that the SIU would become involved, in light of what were then reports that at least one, and possibly more, individuals had been wounded by guns discharged by the OPP, Incident Commander Carson directed Inspector Linton to seize all the guns that had been discharged from the police officers responsible at 12:38 a.m.

Members of the CMU from the prior evening's deployment were sent back to their accommodations, and fresh officers were called in to maintain security in the area. Some officers were assigned security detail for the OPP Forest Detachment, which was seen as a possible target for retaliation. Indeed, at 12:27 a.m., Incident Commander Carson's officers were to become involved in what they characterized as a high-risk takedown in the parking lot of the OPP Forest Detachment.

Jeremiah George had been on the beach during the confrontation between the OPP and the First Nations people. After he heard gunshots fired, Jeremiah George ran west along the beach and lay on a sand hill for about half an hour until the night became quiet.

He then ran toward Ravenswood Road where he met Chief Tom Bressette, Gerald George, Roseanne Bressette, and her sister Deanna Bressette. Jeremiah told them there had been gunfire and that the police had shot at people at the park. Roseanne Bressette was very upset and worried about her husband, Cecil Bernard George. Before Jeremiah George arrived, she had heard over the scanner in the pickup truck that three people had been shot, one of whom was Cecil Bernard, and several wounded. Roseanne Bressette was anxious to know whether Cecil Bernard had indeed been shot. She wanted to go to the OPP Detachment in Forest to see if she could get any answers. Jeremiah George was also concerned about his brother, Cecil Bernard George.

Roseanne Bressette, Deanne Bressette, and Jeremiah George drove in the blue pickup truck toward the Wallygators restaurant on Ipperwash Drive. They were stopped at a police checkpoint at Ravenswood, at the intersection of Ipperwash Road and Highway 21. Jeremiah George was in the back of the truck behind Roseanne Bressette, the driver. He hid on his side with his back against the edge of the truck, as he was frightened. After they passed the checkpoint, they continued to drive toward Forest. As they entered Forest, they passed a white van. Jeremiah George thought it was a police vehicle because as soon as the driver saw him sitting up in the back of the pickup truck, he spun the van around.

After transporting Marcia Simon to the Forest Detachment, Constable Denis LeBlanc was returning to the Tactical Operations Centre (TOC). As he was leaving Forest, he noticed a blue pickup truck with yellow clearance lights coming toward town. The OPP officer recognized the pickup truck from when he had been stationed at a checkpoint near the park and thought that baseball bats had been removed from the vehicle earlier. Constable LeBlanc radioed the Forest Detachment to inform them that there was an inbound blue pickup truck, and followed the truck into Forest.

Constable LeBlanc pulled in behind the blue pickup truck as it arrived at the OPP Forest Detachment. Constable LeBlanc and the two other officers in his vehicle drew their weapons and pointed them at Jeremiah George. According to Jeremiah George, there appeared to him to be more than three officers in front of the police detachment who had their weapons drawn on the vehicle and were yelling commands.

Police officers demanded that Deanna Bressette and Roseanne Bressette leave the vehicle, and get down on their knees with their hands behind their head. They complied. Jeremiah George at this time was standing in the back of the truck. He held one hand up in the air and used the other to pull up his shirt to show he was not armed. Constable LeBlanc ordered Jeremiah George to leave the vehicle and threatened to use force if he did not comply. Jeremiah's response was to



yell, “Where’s my brother, where’s my brother, Bernard? I want to know where my brother is.”

Roseanne Bressette pleaded with Jeremiah to get out of the vehicle. She thought Cecil Bernard had been shot and killed and she said, “I don’t want to lose anybody else. Can you please get out of the truck?” Nineteen-year-old Jeremiah, who was both angry and scared, left the vehicle. He testified that he put his hands behind his head, intending to get on his knees, but was tackled by four police officers. Constable LeBlanc handcuffed him behind his back. Constable LeBlanc disputed that account of the detainment, saying that Jeremiah was already laying on the ground face down when he put handcuffs on him.

The officers pulled Jeremiah George to his feet and escorted him and the two women into the garage of the OPP Detachment. They were forced against the wall in the garage and were instructed to face the wall with their heads pointed toward the ground.

Wally Kaczanowski, a Kettle Point police officer, who had previously received a radio transmission asking him to go to the Forest Detachment, walked into the OPP garage. He saw Roseanne Bressette, Deanna Bressette, and Jeremiah George (lying on the floor in a spread-eagle position). One or two police officers were standing next to them. He heard Roseanne Bressette make a comment to the effect of “They shot Bernard” or “They beat Bernard up.” Wally Kaczanowski did not say anything. He may have asked one of the officers what they had done and had been told they had run through a checkpoint.

Jeremiah George has no recollection that any OPP officer told him that he was under arrest or the reason why he had been handcuffed:

I hope that anybody that goes to the police detachment for help that this doesn’t happen to them. You know, they go to a police station to try and get help, not to get thrown in the dirt and cuffed ... [Y]ou don’t go to the police station for this kind of altercation ...

An officer stood behind Jeremiah George and pushed his head against the garage door because the nineteen-year-old was trying to look around to see the faces of the officers. Roseanne Bressette and Jeremiah George continued to ask for information on Cecil Bernard. Constable LeBlanc heard them raise their voices: “There was just a lot of yelling back and forth and the police officer was probably yelling the loudest, ‘Put your hands up, put your hands up.’” The officers did not give these people any information about Cecil Bernard George. After obtaining their names and addresses and checking their vehicle, the police released them.

This “high-risk takedown” is reflected in the scribe notes: “00:27 hours. Armed takedown outside concluded.” During the takedown, Inspector Carson was in the command post with the radio operator, Sergeant Korosec, Inspector Linton, and A/D/S/Sgt. Wright. They knew a pickup truck had arrived at the Forest Detachment and that there was a concern that the occupants might be armed. There was also a concern about possible retaliation because of the events that had taken place at the sandy parking lot outside Ipperwash Park. Inspector Carson knew that the officers who were providing security at the Forest Detachment had performed a high-risk takedown of the individuals in the pickup truck. He was not aware of the identity of the occupants of the pickup truck, or of the fact that they were related to Cecil Bernard George.

While it is understandable, given the circumstances, that the police were on high alert against possible retaliatory strikes, once it was determined that these individuals were *not* armed or did not pose any risk, they should have been released immediately, and information given to them insofar as possible in response to their questions. Cecil Bernard George’s wife should have been advised that he was at the Strathroy Hospital, as was known to the OPP who had sent him there in the first place.

Shortly after midnight, Inspector Carson returned a call from Chief Tom Bressette. The Chief questioned John Carson’s judgment in having sent in the police under the cover of nighttime darkness. Chief Bressette asked the Inspector why this operation could not have waited until the daytime, inferring that the death of the occupier might be attributed to this questionable decision. All Inspector Carson could say at the time was that he knew that someone was seriously injured, and that this was not the time to debate the wisdom of the actions of the police. About one hour later, at 1:16 a.m., Inspector Carson received a visit from an equally upset Ron George (“Spike”) who, at the time, was a lawyer, but who had formerly been a member of the OPP and is now a Superintendent<sup>1</sup> with the OPP. Ron George had received news of the serious wounding of his cousin Dudley George and asked rhetorically, “Did you at least put a gun in his hand to make it look good?” At the hearing Ron George testified that he was angry and was being sarcastic when he made that comment. Inspector Carson replied, “[Y]ou know better than that,” and directed Ron George to the Strathroy Hospital. The weary Incident Commander then received a visit from Chief Bressette at the command post at around 1:30 a.m. to inquire after the health and location of his Band Councillor Cecil Bernard George. Again, the Chief questioned the wisdom of the timing of the actions of the police.

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1 At the time of giving his testimony, Ron George held the rank of Inspector with the OPP.



By 1:40 a.m., Chief Superintendent Chris Coles was speaking with John Carson in the parking lot of the OPP Forest Detachment.

When Chief Superintendent Coles arrived on the scene, he knew the situation was extremely tense. There had been a shooting by one of his officers, the alleged attempted murder of his officers, and his Incident Commander was under great stress and fatigue. He also believed that the situation was going to escalate. One of the great barriers to resolution had been their inability to talk to the occupiers, and now they had “an extremely volatile situation.” He had a continuing concern about the existence of weapons in the park because the current available information from his officers was that weapons had been fired first by the occupiers, and his officers had then returned fire. Specifically, Chief Superintendent Coles had been advised that shots had been fired from either a school bus or a car, both of which had been driven by the occupiers into his group of officers, threatening their lives. The tension was very high on both sides of the dispute. He knew he needed to bring in new Inspectors to give Inspectors Carson and Linton much needed relief.

OPP Commissioner Thomas O’Grady was notified at about 1:04 a.m. of both the confrontation and the resultant death of a First Nations occupier.

At approximately 2:11 a.m., Inspector Carson received the formal report from Detective Sergeant Trevor Richardson (his head criminal investigator under Project Maple) that Anthony O’Brien (“Dudley”) George had been pronounced dead at Strathroy Hospital, by reason of a gunshot wound to his chest, inflicted by one of his officers. He was also told that the three occupants of the car that had transported Dudley George to hospital had been detained. These were Dudley George’s siblings, Pierre and Carolyn George, and his young friend J.T. Cousins, though Inspector Carson did not know the identities and relationship of these individuals to the deceased at the time.

At approximately 3:00 a.m., word was received at the command post from the *HH Graham*, the police boat, that some buildings in the park were on fire. Just prior to that report, the command post had received word that there was a large fire in the centre of Highway 21, at the exit to the Kettle Point Reserve. Inspector Carson continued to be concerned about the potential for a spillover of violence. He sent a police cruiser to the Mayor’s residence and thought about the need to enhance security around other potential targets.

Fortunately, it was around this time that a breakthrough in communications with the occupiers was achieved. Inspector Carson received a call at 2:54 a.m. from Chief Tom Bressette requesting permission for former Kettle and Stony Point Chief Bonnie Bressette to enter the besieged army camp to try to speak to the occupiers, and to remove those women and children who wished to leave. John

Carson readily agreed, and arranged for her expeditious passage through the roadblocks. He then received a call from Bonnie Bressette at 4:54 a.m. from within the army camp. She was seeking assurance on behalf of the occupiers and residents of the army camp that the OPP would not be entering the camp for any reason, including forcible removal of the people there. Inspector Carson promised the former Chief that the OPP would not be going into either the army camp or the park and asked her to convey that message. Bonnie Bressette agreed to do so. This was the first time that the OPP had explicitly communicated to the occupiers that they had no intention of entering either the park or the army camp.

When John Carson finally went off duty at about 6:00 a.m. on September 7, 1995, he also ended his formal role as Incident Commander of the Project Maple policing operation.

## 19.2 Events at Strathroy Hospital

While events were unfolding in and around Forest and Ipperwash Park, another tragic drama was unfolding in Strathroy during the early morning hours of September 7, in the immediate aftermath of the shooting of Dudley George.

### *19.2.1 Arrest and Detainment of Carolyn George, Pierre George, and J.T. Cousins*

On September 7, 1995, James Thomas Cousins was fourteen years old. He prefers to be referred to as “J.T.” Cousins. As mentioned in Chapter 18, he had just accompanied a fatally wounded Dudley George to the Strathroy Hospital, pressing down on Dudley George’s chest to try to stop the bleeding in a futile effort to save him. Pierre George had driven the disabled car, and Carolyn George was also with them. When they stopped outside the emergency department of the Strathroy Hospital, police officers immediately surrounded them.<sup>2</sup>

J.T. Cousins describes what could only have been a surrealistic experience from his perspective. Instead of accompanying his fatally wounded friend as he was rushed into the emergency department, he was pulled from the car by police officers who told him that he was under arrest for mischief, assault on a police officer, conspiracy, and attempted murder. J.T. Cousins had not been in the sandy parking lot during the confrontation, much less in face-to-face “combat” with any police officer that night. J.T. Cousins responded that he was fourteen years old

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2 See previous chapter for a description of the events that occurred in the parking lot outside the Emergency Department.



and that he wanted to call his parents. The police allegedly responded that he was eighteen years old and was not allowed to make a phone call.

According to J.T. Cousins, the police tried to get him to talk all the way to the OPP Strathroy Detachment. When at the detachment, he said they took the strap off his bound legs, placed there at the time of his arrest, and pulled him from the back of the cruiser. He was still trying to resist, and hence the police had to use physical force to restrain him. J.T. Cousins was understandably in distress at this state of affairs. The police wanted him to change into a gown, and when he initially resisted their demands, the police again physically restrained him. Finally, he did remove his clothes, down to his underwear. The police left a hospital-style gown in the interrogation room, and he reluctantly put it on. He discovered that it tied only at the back, leaving him partially exposed. His shoes were taken away, and he was given a pair of paper slippers.

In the early morning of September 7, young J.T. was taken from his cell and was told he could make one call. He tried to call his mother, but received no answer. He tried to call his grandmother, but he was so distressed that he mixed up the phone number and ended up speaking to the mother of his cousin, who said she would tell his mom.

The police officers at the detachment attempted to obtain a statement from J.T. Cousins, which could have been self-incriminating. J.T. refused to answer their questions, preferring to utter profanities at the police officers. However, he did try to tell them what had transpired the night before from his perspective. He was in an interrogation room, without a lawyer or a parent present while he was questioned by the police officers, for a period of time that evening.

Based on the evidence before me, it would appear that the police attempted to obtain a statement from this minor without the presence of a lawyer or his parent, and while he was only partially clad. The police kept him in the interrogation room in a state of distress. In my view, such treatment of a minor is completely unacceptable and inexcusable. This kind of treatment inevitably serves to alienate First Nations people from the police, and feeds into the beliefs held by some that the police are not to be trusted.

Another passenger in the seized car was Dudley George's sister Carolyn George.<sup>3</sup> After her "arrest," she was also taken to the Strathroy Detachment where she was put into a cell. She could hear but not see her brother Pierre, who was in another cell, and she had no idea where the police had taken J.T.

She learned of the death of her brother Dudley George while in the jail, when her brother Sam George came to tell her. Sam George testified that when he told

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3 The Inquiry did not have the benefit of hearing from Pierre George, who declined to testify.

his sister of their brother's fate, he assumed the police had already relayed the news. However, he quickly realized, from the reaction of his sister, that the police had not told her. Carolyn could not believe that her brother Dudley had died. She had fervently believed that he was still alive when they arrived at the hospital. She later believed that, had they received help along the way to the hospital from an ambulance, her brother would have survived. We now know that more timely medical intervention would not likely have saved Dudley George, given the type and magnitude of the wound he suffered. Still, at the time and for many years thereafter, Carolyn George held that belief in her heart.

Carolyn George was released from jail, along with her brother and J.T., at about 4:10 a.m. on September 7, without explanation, after she called her lawyer, Ron George. Ron George recalls having a brief telephone conversation with J.T. Cousins, and then speaking to the police on behalf of Carolyn and Pierre. He was told that these individuals had not yet been charged with any offences, but were nonetheless being detained while the police considered whether they had grounds to charge them. He was concerned at the fact that these individuals were being detained without charge, but he does not recall any other actions he may have taken to redress the situation on their behalf. In any event, Pierre George's partner, Carolyn Zavitz, met Carolyn, Pierre, and J.T. and brought clothes for Pierre and Carolyn. Unfortunately, no clothes were brought for young J.T. However, he was not about to be left behind, and left the jail in his blue hospital gown, underwear, and paper slippers.

As if these three individuals had not experienced enough trauma, given their desperate drive to the hospital, and the subsequent aggressive arrests and overnight detentions, they were to have one more hostile encounter with the police on their way home. They were travelling home in Pamela George's car when they encountered a roadblock. Police officers surrounded the car, with their guns drawn and pointed at them. Pierre exited the car, telling the others to stay inside. Carolyn was terrified that they were going to be shot or killed. However, after Pierre had an exchange with the police officers, they were allowed to proceed.

It is noteworthy that none of these three individuals — J.T., Carolyn or Pierre — were ever charged with any offence, as the police at the Strathroy Detachment eventually realized that their car was not the one that been the one driven through the sandy parking lot and into the midst of officers that night. Indeed their car was neither the same colour nor make as the one that had been driven into the sandy parking lot (by Warren George, as he subsequently admitted).

At the Ipperwash Review, an internal debriefing conducted on February 21, 1996, Bob Goodall, lead criminal investigator from the Criminal Investigations Branch into the allegations of illegal conduct on the part of the occupiers, expressed



concern that these three innocent people, including a young person, had been put into jail overnight due to a lack of proper information being passed on from the command post in Forest to the OPP Strathroy Detachment. Chief Superintendent Coles shared Inspector Goodall's concern. Had the proper description of the car sought been transmitted in a timely manner, Carolyn, Pierre, and J.T. would, at minimum, have been released earlier and perhaps not detained in the first place.

No apology or public acknowledgement of an error was issued by the OPP for the erroneous detainment and treatment of Dudley George's siblings and J.T. Cousins until Commissioner Boniface's testimony at the Inquiry, during which she issued an apology on the part of the OPP and expressed the OPP's regret that neither Carolyn nor Pierre George had been permitted to stay at the hospital with their brother. It is regrettable that these individuals were not allowed the opportunity of being with Dudley in the hospital to make their peace with him or to partake in the sweetgrass ceremony conducted by their brother Sam George at the hospital over Dudley George's body. The immediate forced removal of the brother and sister and friend of Dudley George from his side, and their detention in a jail cell while other family members mourned at the hospital was, at minimum, an unnecessary aggravation of the tragedy that had already unfolded that evening.

At the Inquiry, and speaking in relation to this unfortunate state of affairs, Commissioner Boniface offered the following apology:

With respect to the arrests at the hospital ... I think it's extremely regrettable that they [Carolyn George, Pierre George, and J.T. Cousins] were not able to continue and spend their time with ... the deceased and I understand that and ... we apologize for that.

### *19.2.2 Arrest and Detainment of Nicholas Cottrelle*

At the time of his arrest, Nicholas Cottrelle was a sixteen-year-old minor. While in his hospital room, and without any parent or lawyer present, the OPP officers attempted to question him, as did members of the province's Special Investigations Unit. These attempts occurred in the early morning hours of September 7, 1995. He remained in the hospital room, guarded by OPP officers to ensure he did not escape, until approximately 3:00 p.m. on the afternoon of September 7. After his doctors gave him medical clearance, he was taken to the OPP Strathroy Detachment for interrogation.

When he left the hospital, he was not wearing his clothes, as they had been seized as evidence in relation to the allegation that gunfire had allegedly emanated from the school bus he drove into the middle of police officers during the

confrontation the night before. Hence, he wore a shirt, hospital pants, and a pair of slippers into the detachment.

According to Mr. Cottrelle, he was taken to an interrogation room at the Strathroy Detachment. He asked a police officer if he could call his mother or his lawyer, and was allegedly told he was not allowed to leave or make a phone call *until* he had made a statement. He believes that the police knew he was a minor. He initially refused to give a statement, and was held in the interrogation room. Finally, he relented and began to give a statement. It was now the evening of September 7, and he still had not consulted with his parents or a lawyer. He had received a social visit at the hospital from his mother and some relatives, but nothing of a legal nature had been discussed (with the exception of his mother indicating to him that he did not have to speak to the police).

Indeed, as far as his mother, Gina George, knew, her son continued to rest in the hospital throughout the course of September 7. When she returned to the hospital to take her son home (with Ron George) in the late afternoon, she was dismayed to find out that he was no longer there, and had been taken to the police station. No police officer had advised her of this development, and she was understandably upset when she discovered it.

Meanwhile, according to Mr. Cottrelle, after the interrogating officer suggested to him that gunfire had been fired from the school bus, which Mr. Cottrelle denied, saying there had been no guns on the bus, the police officer allegedly stopped writing the statement. At this point, Mr. Cottrelle was permitted to call his lawyer, Ron George. It is unclear whether Mr. Cottrelle called Ron George or Ron George came to the hospital of his own accord with Gina George. However, one way or the other, Ron George and Gina George came to the police detachment, and Mr. Cottrelle was permitted to leave with them. This was late in the day of September 7, 1995.

Under cross-examination, Mr. Cottrelle admitted to having a poor memory of the details of his ordeal at the hospital and then the detachment. He did not dispute that his personal effects were seized by the OPP at 4:25 p.m. at the hospital and that he was then taken to the Strathroy Detachment at around 4:30 p.m. Thereafter, he was returned to the hospital to be photographed and then returned later on to the detachment, after which he met with his lawyer, Ron George, and left the detachment.

However, there was no suggestion that his recollection of being interrogated without a parent or a lawyer present was inaccurate. Further, Gina George's recollection that she was not apprised of the police moving her son from the hospital to the detachment or that she was not asked for her permission that the OPP might question him was not challenged.



It must be further recalled that Gina George testified that, when she entered her son's hospital room in the early hours of September 7, there were three to four police officers present, there were bright lights shining in his room, and her son had advised her that the police had already tested his fingertips and hands for gun residue. When she asked her son if he was under arrest, he said he did not know. When she asked one of the police officers in the room this same question, he declined to respond. She told her son that he needed to sleep, and that she would be back during the day. She also told him he did not need to speak to the police. Before she left the hospital room, at about 4:30 a.m., she asked the police officer on duty whether they were going to do anything else with her son. The officer replied no. Hence, she left the hospital room believing that her son was not going to be interrogated or arrested.

Unfortunately, Ron George's recollection regarding his involvement with Nicholas Cottrelle on September 7 was unclear. He did not recall the location at which he picked up Nicholas Cottrelle with Gina George. He had no recall of being present during any interrogation (suggesting he was not, in corroboration with Nick Cottrelle's testimony). He did recall, however, being stopped by the police when he was en route from the Strathroy Detachment with his son, and with Nick Cottrelle and Gina George. He recalls that there were two or three police officers visible, and he believes there was another, possibly a sniper, in the ditch. He further recalled that one of the officers had a long gun in his hand directed at the vehicle. He felt this use of a firearm to be unwarranted in the circumstances. Ultimately, upon identifying himself, he and the others were allowed to pass through the roadblock without further incident.

At some later point, as I discuss in more detail in the next chapter, Mr. Cottrelle was charged with dangerous driving and assault with a weapon (namely, the school bus). The charges were ultimately all dismissed at trial. Justice Graham found that Mr. Cottrelle's act of driving the school bus into the midst of the CMU was a futile but sincere effort to attempt to "rescue" Cecil Bernard George who was in the process of being subdued by the CMU and arrest team of the OPP.<sup>4</sup>

No acceptable explanation was offered at the hearing on the part of the OPP as to why this minor had been interrogated without a parent, much less a lawyer, present. I have grave concerns about the propriety of the police having taken advantage of a youth (ultimately acquitted) in these circumstances. Having regard

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4 It should be noted that normally a youth's name is not to be revealed in relation to criminal youth court proceedings against him. However, Mr. Cottrelle consented to the release of his name (with legal advice from his lawyer) and the requisite order was obtained from the Ontario Court of Justice permitting the Inquiry access to the underlying criminal file.

to the *Charter of Rights and Freedoms*, which guarantees all accused the right to counsel and right against self-incrimination, the OPP should have made better efforts to ensure that Mr. Cottrelle, a minor, had the opportunity to consult with counsel before commencing any interrogation aimed at securing admissions against his interests. The OPP should also have advised his parents of the arrest and detention of Nicholas Cottrelle as soon as possible as required by the *Young Offenders Act*.

### ***19.2.3 Arrest and Detainment of Cecil Bernard George***

Cecil Bernard George remained hospitalized for his numerous blunt trauma injuries for two and a half days. While in hospital he was charged with assault with a weapon, assault of a police officer, and mischief to property. He was also advised by Constable Boon at the hospital that he was going to be charged with attempted murder of police officers, but Constable Boon was in error in this respect. Cecil Bernard George testified that he had no clear recollection of being arrested, but knows that it happened. He was placed under arrest and then taken from the hospital to the OPP Strathroy Detachment, for about one hour, to be processed. He was then taken to the Sarnia courthouse and handcuffed to other prisoners there. Shortly thereafter, he was placed in a segregated cell. He remained in segregation for about one and a half to two days at the Sarnia jail, but he lost track of time. Ultimately he was released. As I discuss further in the next chapter, when his matter came to trial, the defence counsel asked for a directed verdict at the conclusion of the Crown's case, and the trial judge dismissed all charges.<sup>5</sup>

## **19.3 Change in Command of the Ipperwash Police Operation**

Chief Superintendent Coles and Superintendent Parkin quickly realized that a new Incident Commander would have to be assigned to replace the fatigued Inspector Carson and Inspector Linton.

John Carson went off duty at approximately 6:21 a.m. on September 7. Chief Superintendent Coles and Superintendent Parkin assigned Inspector Jim Gordon from the Mount Forest Detachment as the new Incident Commander at about 9:05 a.m., and briefed him. He would be the first of many officers assigned to Incident Commander responsibilities in the following days and weeks. Thereafter, Chief Superintendent Coles and Superintendent Parkin set up an executive operations centre in Grand Bend so as not to overcrowd the command post at

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<sup>5</sup> Reasons for Judgment, Walker J., Ontario Provincial Court (unreported), released July 15, 1996; Inquiry Document # 1004978.



the Forest Detachment. Later, an executive operations centre would be established at Orillia General Headquarters to coordinate the OPP's response following the shooting.

When Inspector Carson returned to duty at approximately 10:00 a.m. he was officially acting in a consultative capacity (though he continued to give direction and remained active in the policing operation), briefing Inspector Gordon and familiarizing him with the area and the personnel. However, while Inspector Carson never resumed official Incident Commander status, in the days immediately following the incident, he served as a critical consultant for Inspector Gordon and others in relation to the evolving police operation. According to Detective Sergeant Don Bell, he reported to John Carson, whom he saw as being effectively in control at the command post.

This was to be the first of many changes in the policing operation and approach at Ipperwash, as will be explored in the next chapter.

#### **19.4 First Measures to Restore Calm by the Aboriginal Parties**

The Assembly of First Nations' National Chief, Ovide Mercredi, was awakened on September 7 at approximately 5:30 a.m. by a telephone call from Chief Superintendent Chris Coles. Chief Superintendent Coles relayed to National Chief Mercredi the news that Dudley George had been shot and killed in the course of a police operation. Chief Superintendent Coles also told Ovide Mercredi that he had heard a rumour that hundreds of Aboriginal people were on the march to Camp Ipperwash, and wanted advice as to how to deal with the evolving situation. National Chief Mercredi responded that when a tragedy such as this occurs in a First Nations community, other First Nations communities will come in support to show their respect for the deceased, and that he should move back police lines to allow this to happen.<sup>6</sup>

National Chief Mercredi recalled at the hearing that it was clear to him that Chief Superintendent Coles, by the tone of his voice and the tenor of his comments, viewed this incident as a tragedy. It also appeared to him that Chief Superintendent Coles was reaching out for his advice, which he gave. As Chief Superintendent Coles testified, he asked National Chief Mercredi if he could assist, the National Chief graciously agreed to do so, and Chief Superintendent Coles was very pleased when the National Chief arrived at the troubled site.

The next step was to pave the way for experienced Aboriginal intermediaries to enter the army camp and, by extension, the park, without police interference

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<sup>6</sup> Note also that the police did in fact relax their checkpoint to allow the marchers through later that morning.

so as to assess the situation inside the army camp and to try to calm the anxiety no doubt being experienced by the people in light of the trauma of the previous night. National Chief Mercredi was aware of Bruce Elijah's work at Oka as a successful intermediary, and told Chief Superintendent Coles that he would be sending Mr. Elijah into the army camp. Chief Superintendent Coles agreed with this proposal.

In the meantime, Bruce Elijah had just returned home to Oneida First Nation from Toronto. He received messages at his home in the early hours of September 7, asking for his assistance. He contacted Chief Tom Bressette and Bonnie Bressette, whereupon they asked him to come to the Kettle and Stony Point First Nation. He came and attended at the Band office, where he was briefed. He then proceeded to the army camp with his brother Howard. When he approached the various police checkpoints en route to the Band office and then to the army camp, the police already knew of his pending arrival and role, and let him through.

Bruce Elijah estimates that he arrived at the army camp in the late morning, sometime after 10:49 a.m. When he arrived he was determined to learn from the people what had transpired, and whether any people inside the army camp needed medical attention. He recalled:

Again, commotion, you know, there's a lot of people [who] were very upset at what had happened. And ours was to try to meet with people and to be able to give them some kind of a feeling that there was something that's going to take place to ease the tension.

Bruce Elijah felt that when he came into this situation "all sides" were asking him to do whatever he could about the volatile and tense situation. He set the following items as the top priority measures to be taken to start to defuse the tension and bring a measure of calm to the situation. His first priority was to ask the OPP to immediately reduce their visibility by pulling their checkpoints back by a couple of miles. The OPP agreed. Second, he wanted people designated to help with the families and injured members. Third, he needed to establish open lines of communication between the OPP and the occupiers to ensure all parties were fully informed. Finally, he wanted to establish a security protocol for the area that would involve the use of First Nations police.

## **19.5 The March from Kettle Point Plaza to the Army Camp**

The relief that was felt by the occupiers at the army camp was palpable when they saw hundreds of supporters marching down Highway 21 from the Kettle Point Plaza in the late morning of September 7. Earlier that morning, people



from the Kettle and Stony Point First Nation and from other First Nations had started gathering at the Kettle Point Plaza, at the edge of the Kettle Point Reserve territory. They were waiting for the arrival of prominent Aboriginal leaders, including National Chief Ovide Mercredi, who was flying in from Ottawa later that day. The plan, for some, was to show visible support for the occupiers and residents of the army camp. Others simply wanted to get their family members out of the encampment and the possible line of fire. Still others wanted to be observers in case of any other approach by the OPP, as a rumour was circulating that two teams of OPP were surrounding the army camp. Gerald George testified that a convoy of people and vehicles assembled with a view to evacuating the army camp and getting the people out of the “combat zone.”

The plan accelerated when Gina George arrived.

Gina George had just been at the Strathroy Hospital to see her wounded son, Nicholas Cottrelle. When she attempted to return to her husband, Roderick George, who was at the army camp, she was refused entry by the OPP. She returned to the Kettle Point Reserve, where she saw people gathered at the Kettle Point Plaza. She then tried to get back into the park via the beach near Wallygators restaurant (west of the park). However, that entry had also been blocked off by the OPP. With nowhere else to turn, she returned to the Plaza where the people and vehicles were gathering. She learned that the people were waiting for Ovide Mercredi and various regional and local Chiefs, but they were not due to arrive for another four or five hours, so she spurred them on to march. She was afraid that the police might open fire on the people in the army camp.

When she started to walk toward the army camp, everyone else followed. Estimates of the number of people marching along with her ranged between 100 and 300. When they reached the police roadblock at Ravenswood Road and Highway 21, the police told the marchers that if they proceeded, their safety could not be guaranteed. Gina George testified, “I didn’t know what that meant. They couldn’t guarantee my safety anyway after shooting one of us. What kind of guarantee was I looking for from them? I wasn’t looking for anything from them anymore.”

Sergeant John Slack was at the checkpoint. He testified that he and the other officers observed between 100 and 200 marchers walking along Highway 21 from the Kettle Point Reserve. They were heading toward the army camp. When the marchers arrived at the checkpoint, Constable Parks attempted to identify a spokesperson from the group but was unsuccessful. Constable Parks asked the marchers not to proceed because the OPP could not guarantee their safety. However, the marchers and vehicles proceeded through the checkpoint. Sergeant Slack recalls that some of the marchers called them “murderers” and “pigs.” A

large media contingent accompanied the marchers. Earlier, the police officers had received orders not to stop the marchers.

With the benefit of advice from National Chief Mercredi as to the likely benign nature of the march, Chief Superintendent Coles advised new Incident Commander Jim Gordon to let the people through the roadblocks. He reasoned that having 150 members of the First Nations in the army camp would probably have a calming and de-escalating effect on the occupiers. Under cross-examination, Chris Coles agreed that “it’s a pretty good assumption” that when emotions run high on both sides, one is in a dangerous period because that state of affairs tends to increase the chances that people are going to make mistakes. He saw a strategic advantage in that the marchers could help defuse the situation. He believed that the protestors had fears just like his officers had fears, so he needed people inside the army camp.

The march took an estimated hour or so to complete.

When Gina George and the others arrived, she felt the relief in the army camp. She spoke to her husband, Roderick, who was anxious, but was also relieved that supporters had come. David George testified that when he first saw the people marching along Highway 21, he felt safer. The dominant emotion that was expressed by the occupiers and residents of the army camp at seeing the people marching toward them was one of “great relief,” confirming Chief Superintendent Coles’ instincts and the wisdom of National Chief Mercredi’s advice.

## 19.6 March to the Tactical Operations Centre

Buoyed by the arrival of supporters, some of the occupiers decided to return to the fateful sandy parking lot area at East Parkway Drive and Army Camp Road, and then on to the MNR parking lot, which was the site of the Tactical Operations Centre from the night before. Many of the supporters accompanied them.

Unbeknownst to the occupiers or the accompanying supporters, the decision had already been made by the new Incident Commander, Inspector Gordon, in consultation with Inspector Carson, to dismantle the TOC because of their own security concerns, and to move back the police checkpoints in the area.

As the occupiers and their supporters walked toward the MNR parking lot, they observed scattered remnants from the night before, including broken shields and spent bullet casings. They also observed a contingent of OPP officers, with other officers behind the lines, running around. The media was also present.

The police officers, seeing their predicament and under orders not to confront the occupiers, quickly withdrew, taking whatever they could with them. They were confronted by an emotionally charged and angry crowd, and in their haste



to leave, left behind equipment and two St. John Ambulance vehicles and a marked OPP van. As they left, they heard angry voices calling them “murderers” and “cowards.”

Tina George had joined in the march with her young daughter, Phoebe Plain, her son, Dale Plain, and Sherry Lynn Bressette. Tina George testified that a female OPP officer pointed a rifle at her and her daughter. She yelled at the police officer, and the officer withdrew. A photograph taken by a member of the media captured this event and is reproduced in this volume.

When the OPP left the TOC, they left behind not only some of the vehicles and equipment but other items, including documents, maps, and floppy discs from the police operation of the night before. This suggests that they did indeed make a hasty departure, as observed by some of the occupiers. With no police presence remaining, some of the occupiers took advantage of the situation to vent their anger by kicking and striking some of the vehicles. David George admitted that he kicked and clubbed one of the St. John Ambulance vehicles, which he described as a van. He testified that when he looked inside and saw it contained no first aid or medical supplies, but rather police equipment, he became angry and started beating it along with some other occupiers. Jeremiah George also admitted to kicking a St. John Ambulance vehicle in the MNR parking lot because he “had a lot of emotions.” Photographs of the St. John Ambulance vehicles used during this operation are also reproduced in this volume.

It merits note here that some of the anger and frustration exhibited by some of the occupiers and directed toward the St. John Ambulance vehicles appeared to be created by a sense of betrayal felt by the occupiers with respect to the apparent role of St. John Ambulance in the police operation. In particular, anger was expressed at St. John Ambulance at its perceived use for police purposes rather than for dispensing first aid care to the injured occupiers on the evening of September 6, 1995. The fact that a St. John Ambulance vehicle was used to transport Cecil Bernard George to the Strathroy Hospital was likely not known by the occupiers at this time.<sup>7</sup> While St. John Ambulance was clearly there primarily in a supportive role to the police and the policing operation, the Inquiry heard testimony that it was common practice for St. John Ambulance to lend vehicles to the police. These vehicles were not used as undercover vehicles for offensive police action. Nonetheless, it was unfortunate that the markings on these vehicles misled the occupiers and their supporters as to what these St. John vehicles were actually intended for, that is, logistical support for the police operation.

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7 See Chapter 17 re transport of Cecil Bernard George to the Hospital.

Sergeant John Slack, who had been at the checkpoint when the marchers passed through en route to the army camp, testified that they had received a report at about 12:30 p.m. that the marchers were proceeding to the Tactical Operations Centre, but by the time they reached that destination, the OPP had already abandoned the site so they returned to the command post in Forest.

## 19.7 Loss of the Crime Scene

The area of the confrontation, essentially comprised of the sandy parking lot, the intersection of Army Camp Road and East Parkway Drive, and the park, was now a crime scene and had to be secured for preservation of evidence and the anticipated Special Investigations Unit and Criminal Investigations Branch investigations. However, in light of the tragedy of events, the last thing Inspector Carson wanted was any more injuries to occur to anyone. Accordingly, he made the decision to maintain a low profile in the area, even at the risk of compromising the crime scene. He directed that the Tactics and Rescue Unit (TRU) and Emergency Response Team (ERT) personnel at the TOC site observe the area, but to do no more. He admitted that these measures were insufficient to properly secure the area, stating that the lack of containment of the area for upward of twelve days meant that the police lacked the ability to collect the necessary evidence to support any version of what events may have taken place. He agreed that in this case it was impossible to secure the scene, because they had to make a choice between safety and protecting the site. Inspector Carson chose officer safety over securing the crime scene.

It did not take long for the crime scene to become severely compromised. Bob Antone testified that by the time he arrived at the scene, on the evening of September 8, and possibly earlier, the crime scene was already contaminated, and he observed people picking up items such as bullet casings. Before coordinated measures could be implemented to safeguard the integrity of the collection of evidence and the physical area itself, the occupiers and their supporters made trips to the crime scene unchecked. They collected bullet casings, broken shields, and other miscellaneous items until the site was virtually evidence-free.

Due to the contamination of the crime scene, which occurred before the joint SIU/CIB/First Nations investigation occurred, it is impossible to determine how many bullet casings and other items were collected, and ultimately whether they were all turned over to the joint SIU/CIB/First Nations investigation that ensued. Many Aboriginal witnesses testified that they either collected such items or saw others collecting such items. However, it is not known whether all those who collected items of potential evidentiary value even testified.



Further, much testimony was heard in which Aboriginal witnesses admitted to having physically altered the crime scene; for example, by moving concrete barriers, and backhoeing sand into a mound as a “barrier” to accessing the sandy parking lot before the joint SIU/CIB/First Nations investigation commenced on September 18, 1995 — days after the death of Dudley George.

Layton Elijah, the Aboriginal peacekeeper designated to ensure security within the boundaries of the park, the army camp, and the sandy parking lot, did not see any measures taken to preserve the crime scene. He observed that, on September 8, 1995, people were walking freely throughout the sandy parking lot and on East Parkway Drive.

In the end, the number and types of bullet casings collected is inconclusive. First, there is no comprehensive record of the total number and type of bullet casings collected. Second, there is no way to conclusively establish that the bullet casings found were actually discharged on the night in question. It was submitted that there were bullet casings collected from non-police-issued weapons, hence suggesting that the occupiers, or some of them, discharged firearms on the evening of September 6. However, there is no sound basis for any such submission, and I reject it.

The occupiers and their supporters were able to freely roam around the crime scene without any checks in place. They took full advantage of the opportunity. The result was that the integrity of the crime scene was severely compromised by the time the joint SIU/CIB/First Nations investigation commenced, as discussed more fully in the next chapter.

## 19.8 Fight for Public Sympathy

One of Inspector Carson’s first thoughts after he received news of the death of Dudley George was to issue a press release telling the public the OPP side of the story before the SIU physically arrived at the command post and placed a media embargo on him.

Once the SIU appeared, all media inquiries and communications would be directed to that unit, and out of the hands of Inspector Carson. He testified: “I felt it was important that, in the public interest and to satisfy the media expectation as well ... that we provide what information we had at that point.”

The controversial aspects of the press release read:

A private citizen’s vehicle was damaged by a number of First Nations people armed with baseball bats. As a result of this, the O.P.P. Crowd Management Team was deployed to disperse the crowd

of First Nations people which had gathered at that location ... As the Crowd Management Unit was leaving the area a school bus and a full sized vehicle drove through the Provincial Park fence striking a dumpster, then pushing the dumpster and the vehicles into the Crowd Management Team. Occupants of those two vehicles fired upon police officers and subsequently police officers returned fire ...

In retrospect, Inspector Carson's decision to issue a press release so quickly was unfortunate. It contained inaccurate information that was misleading and prejudicial to the occupiers. It also had the potential of feeding the fears of local residents by ascribing an act of seemingly random violence against an "innocent" member of the public to the Aboriginal occupiers. It also, no doubt, had the effect of portraying the occupiers in a violent light to all who read the press release.

When Inspector Carson told Superintendent Parkin of his intention to issue a press release before the SIU put the "gloves" on, Superintendent Parkin expressed his reservations, noting it was a debatable issue as to whether John Carson had the authority to issue a press release once the SIU had been notified of the police shooting, even though the SIU had not yet physically arrived at the command post. He openly questioned the wisdom of issuing a press release, given the circumstances. However, it was ultimately the decision of the Incident Commander, and Superintendent Parkin did not interfere.

Further, while Inspector Carson discussed the general content of the press release with Superintendent Parkin, the latter did not see the final draft, nor would he have approved of the level of detail that was ultimately included. In the Superintendent's view, the press release, if it was to be issued at all on behalf of the OPP, should only have reported the fact of the shooting and the involvement of the SIU.

Indeed, former Commissioner O'Grady conceded under cross-examination that, in retrospect, the OPP should merely have put out a press release saying that the SIU had been notified of the incident and would be conducting an independent investigation. He stated this about his and John Carson's conduct: "That wasn't done by him or I, and in that regard, I think we were in error." The press release justified the decision of the OPP to send in the CMU and TRU on the basis of its erroneous rendition of the complaint of Gerald George, which transformed the reality of a rock being thrown at the Band Councillor's car by a relative in the heat of an internal dispute into a fictitious random act of gang violence by Aboriginal people against a "citizen's" car that happened to be passing by. The press release was issued at 6:09 a.m on September 7.



There is no doubt that at the time of issuance, Inspector Carson believed that he had portrayed the events accurately. However, due, in part, to a failure of the questionable intelligence system and, in part, to undue haste, the OPP's initial portrayal of the events of the evening to the public were grossly inaccurate and misleading, creating the potential of increasing the local residents' anger against the occupiers and an escalation of the anxieties and tensions that Inspector Carson was trying to avoid.

When Inspector Carson discovered that the "facts" surrounding the damaged vehicle were in error later on September 7, he testified that he did not address the issue of a retraction because he had too many other important matters on his mind. Also, once the SIU invoked its mandate, any subsequent press releases concerning the incident were within that unit's sole responsibility.

A second press release was issued by the OPP at approximately 6:21 p.m. on September 7, 1995, which was intended to clarify and provide a chronology of the key events that occurred between 7:55 p.m. on September 6 and 3:29 a.m. on September 7. It was based on information believed to be accurate by Chief Superintendent Coles. Notably, while there was no retraction of the prior statement concerning First Nations people damaging a private citizen's car with baseball bats, the description of that event had been modified as "a disturbance involving First Nations persons causing damage to private property in the area" in the main body of the press release, and "Report of mischief to a vehicle at the corner of Army Camp Road and East Ipperwash Drive" in the attached Chronology of Events. It contained the same basic rendition of First Nations people discharging firearms at the police, who then returned fire.

The OPP has never retracted or corrected its public statements of the Gerald George incident or its allegations that the occupiers fired gunshots at police officers. Given the importance of these allegations, the OPP should have corrected the public record at the first available opportunity. Yet it was not until Judge Fraser's judgment in the trial of Kenneth Deane, almost two years later, that the public learned from any official source that the occupiers did not have guns.<sup>8</sup>

In the meantime, the Chiefs of Ontario was issuing its own press releases, setting out what it believed to be the Aboriginal version of events from the previous night. Then Ontario Regional Chief Gordon Peters testified that he directed two press releases to be issued by the umbrella organization late in the day on September 7, in order, in part, to redress the OPP press release that alleged that First Nations occupiers fired upon the police. The initial press release also

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<sup>8</sup> See Exhibit P-484, reasons for conviction, *R. v. Deane*, [1997] O.J. No. 3057; affirmed *R. v. Deane*, [2000] O.J. 403 (C.A.).

requested that the First Nations become involved on a political level to demand that the province remove the OPP from the Ipperwash area and immediately enter into peaceful negotiations with the occupiers. Unfortunately, the initial press release also included erroneous information, such as the allegation that the purpose of the deployment of the CMU and TRU was to “break up the First Nation occupation of the Ipperwash provincial park” and that they had “shot and critically injured two other First Nation citizens — Bernard George in his late 30’s and Nick George, a youth of 13 or 14.” Such misinformation similarly held the potential for inflaming the emotions of people, particularly in the First Nations communities.

The second press release issued by the Chiefs of Ontario, also on September 7, represented the first public call for an inquiry into the events of September 6, 1995.

In contrast to the inflammatory content of the press releases issued by the OPP and Chiefs of Ontario on September 7, 1995, Solicitor General Robert Runciman authorized the issuance of a press release on behalf of the Province of Ontario that was measured and neutral in its comment on the events of the previous night.

The issuance of press releases by the OPP and the Chiefs of Ontario on September 7, providing erroneous inflammatory details regarding the circumstances of the confrontation, was premature and unwise, particularly in light of the existing volatile circumstances and the need, on the part of all parties, to bring a measure of calm to the situation for the good of the occupiers, police, and community members alike.

## **19.9 A Meeting of the Parties — De-escalation Commences**

A watershed meeting occurred at the Pinedale Motel in Grand Bend, at approximately 8:00 p.m. on September 7, 1995. It was initiated by the OPP in an effort to begin some form of meaningful dialogue aimed at de-escalating the tensions and trying to reach some kind of truce on the ground. In attendance were members of the OPP and representative leaders of the First Nations communities, including Chief Superintendent Chris Coles, Superintendent Tony Parkin, National Chief Ovide Mercredi, and Ontario Regional Chief Gordon Peters. Also in attendance was Aboriginal negotiator and peacekeeper Bruce Elijah. The meeting lasted until approximately 12:30 a.m. or 1:00 a.m. on September 8.

Chief Superintendent Coles described the first part of the meeting as “ceremonial.” He described the attendees as being seated in a circle during which an “honest exchange” took place, which led to the initial negotiations.



As a sign of good faith, he accepted Bruce Elijah's guarantee of cottager safety. He had previously known Bruce Elijah by reputation only, as one of the negotiators at the Oka standoff. Bruce Elijah, in turn, felt that he had the respect of the OPP leaders for the peacekeeping role he was playing and was committed to ensuring no further violence or harm occurred to any side. The OPP agreed that First Nations officers from Kettle and Stony Point First Nation would patrol the area jointly with the OPP. The OPP also agreed to decrease its visibility, which it did by using regular police officers in blue uniforms rather than the ERT teams in their tactical gear and by continuing to pull back its checkpoints, allowing the occupiers to gain a measure of calm and sense of security. As well, the OPP agreed to a joint patrol of West Ipperwash Beach and the area surrounding the park and the army camp with First Nation officers, agreed to obtain a copy of the anticipated injunction for the First Nations leaders, agreed to check on the status of the prisoners at the Strathroy Hospital, and agreed to call Inspector Bob Goodall regarding the treatment of Nick Cottrelle at the Strathroy Hospital, as the Chiefs had received complaints from his mother regarding the questioning of her son by police in her absence (and the absence of a lawyer). The meeting ended with an agreement to meet the next day at 4:00 p.m. to continue the negotiations and dialogue.

At this point in time, Chief Superintendent Coles assumed a direct role in the negotiation process. He determined to separate the incident command from the negotiation process, representing a change in police negotiation strategy from that previously adopted by Inspector Carson. After the meeting he briefed the new Incident Commander, Inspector Gordon. He then went off duty at 3:30 a.m.

National Chief Ovide Mercredi also viewed the meeting as a positive step toward the de-escalation of tensions. He recalled that the meeting started with a smudging ceremony. The First Nations leaders made it clear that OPP presence was not welcome in the Aboriginal community, and that as much as possible their presence should be diminished. Regional Chief Peters, together with Bruce Elijah and Bob Antone, were assigned to speak to the cottagers to allay their safety concerns, and were to engage a First Nations policing presence in the area.

Contrary to the other witnesses who testified about this meeting, Regional Chief Gordon Peters had a fairly negative view of this meeting. He did not believe that much progress was made. He also viewed the ceremonial part of the meeting, which was presented as a "talking circle," as a manipulative ploy on the part of the OPP who brought an Aboriginal OPP officer into the meeting with a sacred peace pipe. He viewed the ceremonial aspect of this meeting as a way to keep the Aboriginal participants quiet, and claimed that the Aboriginal participants had not known in advance of the OPP's intention to format the session as a talking circle.

Irrespective of Gordon Peters' views, this meeting did achieve a very important objective. It represented the first session between OPP and First Nations leaders in the aftermath of the shooting death of Dudley George at which dialogue was commenced and pursued. It also marked the beginning of a bridging of the communication gap between the OPP and the occupiers that had persisted to that point in time.





## THE WEEKS AND MONTHS FOLLOWING THE DEATH OF DUDLEY GEORGE — THE DEVELOPMENT OF A STATUS QUO, BUT NO RESOLUTION

### **20.1 Change in Police Tactics, Infrastructure, and Priorities after the Shooting**

Changes in the OPP approach to policing at Ipperwash Park were swift and dramatic in the wake of the shooting death of Dudley George. They can be summarized under three primary areas. First, the police approach focused on the de-escalation of tensions. This translated into a reduced visibility of police presence, especially in relation to TRU and ERT visibility, a pulling back of checkpoints to expand the perimeter of “containment” (thereby relinquishing the previously all-important sandy parking lot area), and a loosening of restrictions in relation to the movement of Aboriginal people through checkpoints. This change resulted in losing the TOC site (and some OPP and St. John Ambulance equipment and vehicles), and the crime scene for a protracted period of time.

Second, the negotiation mandate was taken away from the Incident Commander and placed in the hands of Chief Superintendent Coles. This effectively isolated negotiations from active police operations “on the ground” and concentrated responsibility in a higher level of command within the OPP. This change facilitated discussions and negotiations at a level removed from the occupiers and the policing operation on the ground (with the possible exception of highly skilled police crisis negotiators). The resulting dialogue facilitated the deployment of unarmed First Nations police officers from nearby Kettle and Stony Point First Nation Police Service, and later on the Anishnabek Police Service, to patrol the perimeter surrounding the park and army camp (including the nearby cottages), a fluid line of communication between the occupiers and the OPP, access to the crime scene in the form of a joint SIU/CIB/First Nations investigation, a return of some of the property removed by Aboriginal persons from the abandoned TOC site, and ultimately the voluntary surrender of several of the occupiers who were the subject of outstanding arrest warrants relating to events that occurred between September 4 and 6, 1995.



The third significant change was the recognition that, with new Incident Commanders coming on board, the intelligence system had to be given its proper priority, in terms of process and resources, and was formalized to improve information flow, efficiency, reliability, and analysis.

The initial steps to implement these changes occurred on September 7. The end result of these three operational shifts was that an extremely volatile situation with the potential for more violence was ultimately calmed and a status quo developed, which, for the most part, has remained in place today.

### *20.1.1 Change in Incident Command for Project Maple*

Following the death of Dudley George, there was a change in the OPP command structure for Project Maple, in which senior officers (superior in rank to the Incident Commanders) became more directly involved in managing the police response. The main oversight responsibility fell to Chief Superintendent Chris Coles, with support from Superintendent Tony Parkin.

The two senior police officers took a more “hands-on” role in providing advice to the new Incident Commanders. Their advice was initially driven by the all-consuming concern of de-escalating the potentially explosive situation. The other key management shift occurred in the form of severing the negotiation and/or communication mandate from the Incident Commander’s responsibilities, with Chief Superintendent Coles now taking the lead in negotiations and discussions with the Aboriginal occupiers through intermediaries, and in particular through National Chief Ovide Mercredi, Ontario Regional Chief Gordon Peters, and the well-known Aboriginal intermediaries Bruce Elijah and Bob Antone of the nearby Oneida First Nation. The key policing steps that were successfully implemented were the product of an intense period of negotiation and (local) community management efforts spearheaded by Chief Superintendent Coles and Superintendent Parkin, starting with the late night Pinedale Motel meeting reviewed in the previous chapter.

Coles and Parkin recognized that one of the first tasks to be addressed was to replace the fatigued Incident Commanders. At 9:05 a.m. on September 7, during the course of a telephone conversation, Superintendent Parkin officially appointed Inspector Jim Gordon as the new Incident Commander. Inspector Jerry Thompson took on the role of the alternate Incident Commander, succeeding Inspector Linton. Inspectors Rick Turnbull and Bob Pilon also became rotating Incident Commanders, replacing the Carson–Linton team.

### *20.1.2 The Changed Role of Inspector John Carson*

John Carson described his role when he resumed duties after 9:00 a.m. on September 7 as assisting Inspector Jim Gordon in becoming familiar with the incident. He spoke to Sergeant Brad Seltzer, the OPP lead crisis negotiator, at 11:27 a.m. with respect to Seltzer's ongoing efforts to obtain an intermediary from the Kettle and Stony Point First Nation community the day before to facilitate discussions with the occupiers. Seltzer reported that he had made inroads on September 6 concerning contacts within the military base and had been close to engaging Robert George from the Kettle Point reserve as a person to facilitate discussions between the OPP and the occupiers. Brad Seltzer expressed frustration with what had transpired the night before, because it had appeared to him and his partner, Lorne Smith, that as of 11:00 p.m. on September 6, negotiations appeared probable, meaning a form of facilitated discussion or contact, which is the first step toward meaningful dialogue. Brad Seltzer had reported his view that they would get inside the army camp on September 7 to initiate discussion with the occupiers to John Carson before going off duty at 8:00 p.m. on September 6.

Returning to September 7, just before noon, Inspectors Carson and Gordon discussed moving the TOC away from the MNR parking lot and expanding the perimeter as part of a general plan to pull back the checkpoints in an effort to de-escalate the situation. Unfortunately, events once again overtook the situation, and when the occupiers and their supporters arrived en masse at the TOC, the police had to abandon the premises quickly, leaving behind equipment and vehicles belonging to the OPP and to St. John Ambulance.

Inspector Carson later had a telephone conversation with A/D/S/Sgt. Mark Wright who was in London giving evidence on the injunction application. John Carson's view regarding the injunction was that it was now pretty much a moot point, and was a low priority from the policing perspective. His view was that the OPP no longer needed an injunction as a basis for going into the sandy parking lot area, since it was now a crime scene, and the police had grounds for search warrants. However, the purpose of obtaining an injunction originally was to establish whether or not the occupation was illegal for purposes of potentially removing the occupiers from the park if and when the appropriate time came.<sup>1</sup>

John Carson finished his shift as the "advisor" to the new Incident Commander at 5:00 p.m. on September 7. However, he continued to report for duty on a regular basis in the days immediately following the shooting. Indeed, he continued

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<sup>1</sup> See section on Injunction Proceedings later in this chapter for a more detailed account.



to be looked at by some of the police officers as the Incident Commander, even though he was no longer so.

### ***20.1.3 Renewed Focus on Resolution through Peaceful Negotiation — De-escalating the Tensions***

One of Chief Superintendent Coles' first tasks on September 8, following the Pinedale Motel meeting of the night before, was to direct new Incident Commander Jim Gordon to do nothing to aggravate the situation. All police efforts were to be focused on de-escalation of the existing anxieties and tensions. This meant that no aggressive action would be taken by the OPP, and use of force would only occur in rescue situations. He also informed Inspector Jim Gordon that he had agreed to allow the Kettle and Stony Point First Nation Police Service to take over the patrolling responsibilities of the perimeter of the park and army camp, including the nearby cottages. There would be no visible OPP presence in the immediate vicinity of the park and army camp. Furthermore, Chief Superintendent Coles determined to assume responsibility for direct negotiations with the Aboriginal parties with a view to working out measures aimed at de-escalation and returning the situation to one of calm. For the first time, the all-important negotiation mandate was removed from the Incident Commander.

Chief Superintendent Coles, together with Superintendent Parkin, had another meeting with National Chief Ovide Mercredi at 8:00 p.m. that evening. The key point agreed upon was that the OPP would allow other First Nations policing services, namely, the Anishnabek Police Service to supplement the Kettle and Stony Point Police Service, which already had more responsibility than it could handle. At the same time, Coles agreed to further reduce the visibility of the OPP in the immediate vicinity of the army camp and the park, while maintaining the same number of officers ready on standby, in Forest and at Pinery Park. The decrease in visibility was achieved, in part, by using police officers wearing the common blue uniforms at the pulled-back checkpoints, rather than ERT officers in grey uniforms.

One of the weaknesses of the police operation in the days prior to the death of Dudley George was the inability of the police to communicate their intentions to the occupiers. The necessity of communicating those intentions was identified as an urgent concern in the aftermath of the tragic events. According to Chief Superintendent Chris Coles, it is essential that occupiers be advised of the OPP's peaceful intentions to act as peacekeepers. He agreed that in protest and occupation situations, the police do not want to take the people by surprise, or

otherwise conceal their intentions. Instead, the police typically want to telegraph their intentions to the occupiers or protesters, in order to reduce the possibility of a misunderstanding, which, in turn, could lead to the occupiers misinterpreting police activity as a threat, which could then lead to violence. Coles further agreed with the suggestion that it would be reasonable for the occupiers to misinterpret the intentions of the Crowd Management Unit (CMU) when they were marching in their full hard Tac uniforms with shield chatter at night, in the absence of being told what their intentions were.

Ovide Mercredi initially took on the role of communicating OPP intentions to the people in the park. Chief Superintendent Coles saw this as a positive sign and an acknowledgment that the OPP recognized it needed help, and sought and accepted it.

Chief Superintendent Coles and Superintendent Parkin continued to have meetings as often as needed with Aboriginal leaders with the aim of further de-escalating the situation and bringing some sense of normalcy back to the community while making progress on determining what it was the occupiers wanted. They also became the intermediaries for the Ministry of Natural Resources (MNR) in dealing with logistical matters relating to the park, such as the looming need to winterize the park's facilities.

For his part, the Commissioner of the OPP, Thomas O'Grady, continued to be involved in those matters that required his direct involvement, such as participating in meetings at the Ministerial level at Queen's Park. For example, he sent a letter to Solicitor General Runciman requesting the loan of a light armoured vehicle (LAV) from the Canadian Armed Forces to the OPP for its operation at Ipperwash. He testified that the purpose behind the request was to have the vehicle on hand in the event his officers required a rescue — it was not to be used for offensive purposes. The protocols in place required that the Commissioner make a written request to the Solicitor General, who in turn would make the request to the federal government. In the end, the OPP received an LAV on temporary loan from the General Motors plant in London, through a pre-existing arrangement General Motors had with the London Police Service for temporary loans of these vehicles. While the loan was made, the LAV was never deployed.

Commissioner O'Grady also attended meetings at the Ministry of the Solicitor General's office at Queen's Park in order to brief key members of the reconstituted Interministerial Committee, including Deputy Minister Todres, and representatives from the Ministry of the Attorney General, and the Ministry of Natural Resources. The minutes of the September 18, 1995, Ministry of the Solicitor General meeting referred to the purpose of these meetings as managing the shift



from a (police-driven) tactical approach to a more (government-driven) political approach.<sup>2</sup>

From a policing perspective, another key element in de-escalating the tensions was implementing a strong public relations plan that addressed the fears and concerns of the local Aboriginal and non-Aboriginal community. This was accomplished by having a senior OPP officer attend various community and township meetings. This task largely fell to Superintendent Tony Parkin, though Chief Superintendent Coles initially accompanied Parkin to the meetings. The meetings occurred on a daily basis for approximately eighteen days following September 6, and then every other day until about mid-October. Thereafter, Superintendent Parkin continued to attend meetings of local residents, the Town of Bosanquet, and other community groups into 1996 to answer questions, respond to concerns, and reinforce the fact that the police had things in hand from a public safety perspective.

The senior OPP officers who testified recognized the fundamental importance of Bruce Elijah and Bob Antone in providing continuity in police–Aboriginal relations during the initial period, and assisting in brokering agreements incrementally as between the OPP, the MNR, and the occupiers. Bruce Elijah testified that had anyone asked for his assistance in advance of the incident — the police, the government, the occupiers, or the First Nation — he would have provided it.

Indeed, John Carson lamented this lost opportunity in his testimony. He had been aware that Bruce Elijah and Bob Antone had been at the army base in the summer of 1995 and had conducted a cultural awareness training program in July 1995. He was not sure if he knew at the time that Captain Smith, of the military, had also used their services to facilitate communication between the occupiers and the military at the base. He admitted that using the services of Mr. Antone or Mr. Elijah to establish communication had not been considered, and could not offer any explanation as to why not.

Later on in his testimony, John Carson added: “I would suggest there were perceptions on both sides, and they were probably slightly distorted from reality.” He further agreed that those perceptions contributed to the tragedy that occurred on September 6 and that communication would have dispelled some of the misconceptions on both sides.

One must wonder whether an earlier involvement by these two individuals might have averted the decision to deploy the CMU and TRU teams on September 6, merely by facilitating effective communication between the occupiers

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2 See Chapter 12, Part II, “Police–Government Relations,” for my analysis and recommendations relating to the distinction between police operations and policy, and my proposed new relationship between the two institutions.

and the OPP. It seems that such an approach would have been prudent, given that John Carson was aware of these two individuals by reputation and their successful intervention as intermediaries at the Oka crisis. Both of these individuals resided at the nearby Oneida Reserve, and had had involvement as intermediaries between the military and the occupiers during the spring and summer of 1995, prior to the takeover of the barracks. In fact, Bruce Elijah had visited the occupiers at the army camp as early as 1993, and was familiar with the history relating to the appropriation of the army camp and the Aboriginal peoples' frustration with the lack of progress of the federal government in returning that land to them.

Commissioner O'Grady emphasized the objective of de-escalating tensions at the Ministerial level. At one such meeting of the newly and arguably more appropriately constituted Interministerial Committee, held on September 27, 1995, the Commissioner, with Chief Superintendent Coles, emphasized to Deputy Solicitor General Elaine Todres and the other attendees that there were ongoing negotiations involving various people to try to reduce the tension while at the same time conducting a joint crime scene investigation involving the Special Investigations Unit (SIU), the OPP's Criminal Investigations Branch (CIB) and the Aboriginal representatives.

#### ***20.1.4 Repair of the Information Flow and Processing Functions within Project Maple***

Not having a "one-stop" intelligence shop, or central repository of information, was a critical vulnerability of Project Maple. In the post-shooting police operation, measures were put in place so that the proper collection, evaluation, collation, and analysis of information occurred, thus preparing the Incident Commander to make appropriate tactical decisions.

The lack of filtering and assessment of intelligence was formally rectified on September 12, when Detective Inspector Hutchison made Detective Sergeant Don Bell the single conduit for all intelligence functions. All raw data from any source was to go through Don Bell, who was then responsible for ensuring that the data was properly analyzed and assessed through the intelligence cycle. Further, a new operational plan from the intelligence side was developed. The accompanying memorandum from Inspector Hutchison stipulated that all information was to be channelled through Don Bell, and provided for an enhanced complement of trained intelligence officers to properly manage this aspect of the police operation. As stated in the memorandum, Inspector Hutchison was named the Officer in Charge for crime, intelligence, technical support, and communications, while Detective Sergeant Don Bell was formally designated with the responsibility of overseeing the intelligence function and personnel.



While there was no formal “changing of the guard” until September 12 with respect to the hierarchy in the intelligence unit, with Detective Sergeant Trevor Richardson having his hands full in terms of the ongoing multiple criminal investigations, an informal reporting relationship took place outside the organizational chart and Don Bell assumed a leadership role in the intelligence component.

In the days and weeks following the death of Dudley George, the main concern identified by the intelligence unit was information coming from a variety of sources that suggested that certain Aboriginal groups or individuals might be planning retaliation strikes against vulnerable targets, such as the propane tank behind the London Police station, and the transformer off of Wellington Road, west of the Regina Mundy school in London. Indeed, the number one threat that Detective Sergeant Bell identified at this point in time concerning public and officer safety was that there might be some type of violent retaliation from Aboriginal supporters of the occupiers. This threat was initially identified on September 7. With the new properly structured and resourced intelligence mandate, Don Bell made a lot of progress collecting, assessing and analyzing data within a short time frame from his sources, contacts, and other intelligence networks (including CSIS and the London Joint Forces Operation).

As the police operation proceeded into the post-shooting de-escalation phase, Don Bell reported this information directly to Inspector Hutchison who, in turn, reported to the Incident Commander, but not before the information had been analyzed and reliability factors attached to it. This was a vast improvement over the process in place under Incident Commander Carson.

As well as implementing an enhanced, organized intelligence process, the intelligence unit acquired a larger dedicated complement of trained personnel. On September 8, 1995, the Director of Intelligence of the OPP, Dave Crane, determined that the intelligence unit needed a more secure and private office for the intelligence officers to work in and a classic analyst trained in intelligence from OPP General Headquarters in Orillia. Ultimately, two analysts were assigned to the police operations at Ipperwash — one for the intelligence unit and one for the criminal investigation branch. Hence, it was recognized that the police operation needed an intelligence unit that was independent from the criminal investigation unit. Under Carson, the intelligence component had been subsumed within the criminal investigation unit under the direction of a non-intelligence officer, Trevor Richardson.

By September 9, Detective Sergeant Don Bell had ensured that all of the information that had been collected since September 4 was catalogued so that he and the other intelligence officers were working from the same database of information, and the analyst could begin his analytical review. This was the first

time a formal analysis had been done of the raw data collected since prior to the occupation of the park.

On September 11, the intelligence unit moved to more private and secure offices at the OPP Grand Bend Detachment, which was also the site of the executive office of Chief Superintendent Coles and Superintendent Tony Parkin. The London Joint Forces Operation took more of a leadership role in the intelligence function under Project Maple than it had in the past. The result was that all information flowed through a single repository through intelligence officer Don Bell, from which written executive summaries were prepared and presented twice a day to the Incident Commander, with the benefit of analysis and a degree of reliability attached to the information. When more urgent matters arose in between reports, they were discussed in person or via telephone by Don Bell and the Incident Commander.

The human resources dedicated to the intelligence function were increased so that the Incident Commander had trained intelligence officers on duty twenty-four hours a day, and seven days a week.

In short, in the post-shooting police operation, measures were in place so that the proper collection, evaluation, collation, and analysis of information occurred, thus preparing the Incident Commander to make well-informed tactical decisions. The tangible result was that while there was a lot of information coming in suggesting aggressive and possibly violent retaliatory plans were being made by external Aboriginal groups, in the end no such threat materialized, and no decisions involving aggressive tactics were made premised on the possible materialization of such a threat. This non-confrontational form of police involvement, in turn, was essential to the overall goal of de-escalation of the tensions that built up in the hours and days following the death of Dudley George.

There can be no doubt that a properly resourced and organized intelligence component to the Ipperwash police operation enhanced the ability of the Incident Commanders to make more astute decisions.

It is only logical to assume that had the information given to John Carson during the early evening hours of September 6 been processed through proper intelligence channels, he would likely not have received the erroneous information, including the error-ridden report relating to Gerald George concerning the allegations that occupiers had guns in the park and that a group of occupiers had randomly attacked a female civilian's car with baseball bats, the totality of which led him to believe that the situation at the sandy parking lot had escalated in terms of risk to public safety (including a possible expansion of the occupation to the sandy parking lot and beyond) to the point where it justified the aggressive police action that followed later that evening.



Detective Sergeant Don Bell admitted that either he or a trained intelligence analyst would likely have detected the pattern of the occupiers using the yellow school bus (driven by Nicholas Cottrelle into the sandy parking lot) in association with other aggressive manoeuvres, and would have flagged for him the potential risk that the bus in the park facing the sandy parking lot posed to the police that night. Notably, second in command of the CMU, Sergeant George Hebblethwaite, testified that the bus did not cause concern or register as a potential weapon when they initially saw it that night, but he was unaware of the past use of the bus. Such information might have altered the course of events that evening. As it was, the bus was not even considered in the strategy discussions leading to the ultimate decision to deploy the CMU and TRU. Without the benefit of a formal intelligence unit of the type that was implemented immediately after the shooting, John Carson was deprived of the opportunity to make an informed decision based on as accurate and reliable information as possible. Don Bell testified that a trained analyst would have provided John Carson with “one stop shopping” to assist him in taking his tactical priorities forward.

While one cannot know whether with the benefit of the correct information, including the potential threat posed by the bus, Inspector John Carson would nevertheless have sent the CMU into the sandy parking lot that night, it was a critical piece of analysis that he did not have.

Later on, Project Maple was replaced with a new police operation called “Project Bluewater,” which was formulated in late 1995 as a contingency plan in relation to a possible takeover by First Nations people of the nearby Pinery Park. Under this police operational plan, the intelligence function was formalized to reflect the same structure, function, and organization as developed under Project Maple after September 6. A new enhanced computer software database program with greater search capabilities was allotted to the Ipperwash policing operation after September 6, which was called White Rose. In addition to the use of the enhanced White Rose database, the OPP acquired the use of the RCMP’s Westcam — a sophisticated aerial surveillance device with enhanced capabilities, which it deployed over the park and army camp.

Don Bell remained in his position as the senior intelligence officer for the Ipperwash police operation until June 1998, when he transferred to the biker enforcement unit.

## **20.2 The Role of the Aboriginal People in De-escalating the Tensions**

In the aftermath of the shooting death of Dudley George, prominent Aboriginal leaders came forward to assist with the goal of providing support to the occupiers

as well as to the police. Efforts were also made to provide assistance to the government, though those efforts were not immediately welcomed.

### *20.2.1 The Role of the Aboriginal Peacekeepers*

As indicated earlier in this chapter, one of the first orders of business for Bruce Elijah and Bob Antone in terms of de-escalating the tensions felt by the occupiers and their supporters, on the one hand, and the local non-Aboriginal residents, on the other hand, was to bring in a measure of non-OPP security into the area. For obvious reasons, the OPP were not welcome by the residents of the Kettle Point Reserve or those of the army camp and park. They accomplished this with the assistance of their own First Nation, Oneida, which had received a request for assistance from the occupiers. Initially, Bruce Elijah and Bob Antone were designated by the Oneida Longhouse and Council to give assistance and be present in the army camp and park. Bob Antone took on the role of observer and described his role as a “messenger” between the OPP and the occupiers and the Kettle and Stony Point First Nation. He assumed this role, in part, because the occupiers and the Chief and Band Council of the Kettle and Stony Point First Nation were still not on good terms, though the tragedy of the night before had brought the two communities closer together. Layton Elijah later replaced Bob Antone as the observer.

Gordon Peters described the role of the peacekeepers as creating a buffer between the people in the army camp and park, and the police. While he did not play any role in their selection, he was very confident in the choice of Bruce Elijah to oversee the Aboriginal peacekeepers.

The peacekeepers were not rigid in their roles. They assisted in acting as “internal” security for the people in the army camp and park in the initial days following the events of September 6. They assisted in conducting an “internal” investigation into those events from the perspective of the Aboriginal people in the army camp and park. They also assisted, from time to time, through Layton Elijah, in facilitating and overseeing the implementation of agreements on small items as between the OPP, MNR, and the people residing in the army camp and park. As an example, the peacekeepers oversaw the implementation of agreements relating to entry into the park, including the entry of the MNR into the park in late 1995 to winterize the park’s facilities. The mere presence of the peacekeepers within the army camp and park greatly contributed to calming the fears and anxieties of the Aboriginal people within them.

Layton Elijah, in turn, was designated the head of the peacekeepers in charge of security by Oneida, under the general direction of and reporting to Bruce Elijah. Their assignment was to keep the peace within the boundaries of the



disputed territory (the park and the army camp, and the immediate surrounding area, including the now evacuated cottages directly across from the sandy parking lot, which was now a crime scene). Layton Elijah did this with the assistance of several other designated peacekeepers from Oneida. They were unarmed.

Layton Elijah testified that he was directed by Oneida Council to go to the park with as many men as possible to meet with the occupiers and find out what they needed, where they needed the peacekeepers, and to do the best job they could. He understood his main function as head peacekeeper was to be an observer. He arrived at the park with thirty-six men from Oneida in the evening of September 8, and he stayed in the park until the end of September 2004. His function as head of the peacekeepers evolved beyond observation to setting up internal security on behalf of the occupiers. He set up checkpoints and controls along the perimeter of what he described as the “territory,” which included Matheson Drive to the south of the park, and extended beyond the sandy parking lot to the cottages beyond Army Camp Drive and along East Parkway Drive up to, but not including, the MNR parking lot (the former TOC site). The peacekeepers continued their patrols until November 1995, by which time the fears of the occupiers concerning any plans by the OPP to forcibly remove them from the park had disappeared.

At this time, the occupiers also fostered an internal Aboriginal-led investigation into the events of the evening of September 6, 1995. This investigation was separate from the joint SIU/CIB/First Nations investigation that occurred between September 18 and 20, 1995, with Chico Ralf as the lead Aboriginal representative. The primary objective of this internal investigation was to retrieve physical evidence. The items collected (e.g., OPP logs, notes, and maps) were eventually turned over to the OPP. This internal Aboriginal investigation commenced on September 10 or 11 and was led by Layton Elijah, with the primary assistance of Ben Pouget and Martin Doxtator (and others who were in the field). The Aboriginal investigators also found various liquor bottles in the field between the former TOC site and the sandy parking lot, and hypothesized that OPP officers had consumed the contents of the bottles. There was, however, no credible evidence before me to suggest who had consumed the liquor or indeed when the liquor had been consumed, much less to suggest that any OPP officer consumed liquor while in the course of his or her duties.

Layton Elijah also acted as the repository for storing bullet casings and OPP equipment (including broken shields) picked up by the occupiers and their supporters, and he testified that he turned these objects over to the OPP as well.

While Bruce Elijah’s role overlapped with Layton Elijah’s, Bruce Elijah was only present from time to time, whereas Layton Elijah was at the park on a

full-time basis. Also, as Bruce Elijah's role as an intermediary decreased as 1995 came to an end, Gordon Peters' role as intermediary increased. Bruce Elijah ceased to be formally involved as a designate of the Oneida Longhouse as negotiator and facilitator in the latter part of 1995. Thereafter, the Longhouse designated Layton Elijah as the liaison between the occupiers and the OPP. In 1996, at the request of the Chief and Council of the Kettle and Stony Point First Nation, Oneida formally withdrew the assistance of their peacekeepers from the army camp and park, though Layton Elijah stayed on.

### ***20.2.2 First Nations Investigation Team***

Bruce Elijah identified the need to establish a formal First Nations investigation team, which might ultimately work co-operatively with the Special Investigations Unit (SIU) and the OPP. He was aware that the SIU was supposed to come in and undertake their own investigation but as the days went by without any signs of such an investigation, Bruce Elijah became concerned. He believed that by establishing a First Nations investigation team, he would hasten the process of the SIU investigation. He contacted a retired First Nations OPP officer, Chico Ralf, to head up a First Nations investigation team. He chose Chico Ralf because he was a retired officer of the OPP who understood the mechanics of an OPP investigation. Gordon Peters also played a role in the development of the terms and conditions for the joint process.

The mandate of the First Nations investigation team was to determine who did the shooting and where the shooters had been set up. The First Nations investigation team was distinct from the First Nations security team (the peacekeepers under Layton Elijah), which had also been established.

Chico Ralf received the request through the Chiefs of Ontario office. He attended a short briefing meeting at that office in or around September 14 or 15, 1995. He then met with Bruce Elijah at Oneida on September 15, 1995, where he received a detailed briefing on the assignment, and travelled to Camp Ipperwash with Bruce Elijah, where they met with Bob Antone and Regional Chief Gordon Peters. Thereafter, he assumed a leadership role in the ensuing joint SIU/CIB/First Nations investigation of the crime scene.

Chico Ralf also assisted in facilitating the return of OPP and St. John Ambulance vehicles and property removed from the TOC site at the MNR parking lot in and around September 7, 1995.

Bruce Elijah was concerned about the bad publicity the occupiers were receiving in the local media concerning rumours of break-ins by the occupiers into the nearby cottages. To counter the misinformation, he organized a joint OPP–First



Nations investigation team tour of the cottages located within the security area of the First Nations (i.e., bordering the beach between the sandy parking lot and the MNR parking lot). This tour occurred on September 10, and was videotaped, in the presence of Officers Jim Potts and Paul Trivett of the OPP, Miles Bressette of the Kettle and Stony Point Police Services, Marvin Connors on behalf of the Stoney Point security team, Regional Chief Gordon Peters, and Bruce Elijah. This videotaped tour of the cottages showed that there was no evidence of wholesale break-ins or significant damage to property, though the investigation did reveal that one cottage had a broken door jamb.

Mrs. Fran Hannahson owns the cottage that had the broken door jamb. She testified at the hearing that when she and her husband, Robert, returned to their cottage, there were items in their house that did not belong to them, and that their door had a broken jamb. She also testified that on a subsequent visit, she and her husband discovered a pellet gun and a pair of night-vision goggles. However, she also testified that she did not suffer any physical, emotional, or financial stress as a result of the events. Indeed, she confirmed that she had no intention of selling the family cottage, notwithstanding the troubling events of September 6.

Mrs. Hannahson's neighbour and sister-in-law, the late Isobel Jago, told the Commission's investigators that her cottage had also been broken into. Unfortunately, Mrs. Jago died before she could testify at the Inquiry, but her statement to the Commission's investigators was entered into evidence.

### ***20.2.3 Joint SIU/CIB/First Nations Investigation of the Crime Scene***

After speaking to the occupiers and gaining their permission to enter the sandy parking lot, the First Nations investigation team negotiated with the SIU and CIB investigation units to attend the crime scene (which was now under the protection of the Oneida peacekeepers) and conduct an official, albeit late, investigation.

A tripartite Memorandum of Understanding executed on behalf of the SIU, CIB and the First Nations investigation team was signed on September 17, 1995. The three parties carried out their joint investigation between September 18 and 20, 1995, and the results of the investigation were documented. Unfortunately, the value of the joint investigation, from an evidentiary point of view, was questionable at best, given that the crime scene had already been physically altered and contaminated by the removal of potential evidence long before the joint investigators arrived on the scene.

On September 19, 1995, a further Memorandum of Understanding was signed between the residents of the former Stoney Point Reserve (the army camp and the

park) and the OPP setting out the conditions for conducting a joint identification of the school bus driven by Nicholas Cottrelle and the Chrysler New Yorker driven by Warren George into the sandy parking lot during the confrontation.

#### ***20.2.4 Voluntary Surrender of Certain Occupiers under Existing Arrest Warrants***

Bruce Elijah also played a role in facilitating the voluntary surrender to the OPP of those occupiers who were the subjects of outstanding arrest warrants. All twenty-four of these men were charged with forcible entry and forcible detainment (contrary to Sections 72(1) and 72(2) of the *Criminal Code*) relating to their alleged unauthorized entry into Ipperwash Provincial Park. The Crown, who determined, based on the available evidence, that they had a reasonable colour of right defence, ultimately withdrew all of these charges. A colour of right defence means the Crown Attorney must be satisfied that the available evidence would show that the accused had a reasonable belief that they had the right to be in Ipperwash Provincial Park. The withdrawal of the charges does not answer the question of whether the accused has any legal right of possession to Ipperwash Provincial Park. Rather, it indicated that the Crown Attorney did not believe that he had a reasonable prospect of gaining a criminal conviction on those charges.

### **20.3 Injunction Proceedings**

#### ***20.3.1 September 7 Court Appearance***

Crown lawyers Tim McCabe and Elizabeth Christie drove through the night from Toronto to Sarnia for the hearing of the injunction motion at 9:00 a.m. on September 7 before Justice Daudlin. A motion record containing the affidavit of Les Kobayashi was before the court. Les Kobayashi, on behalf of the Ministry of Natural Resources, was present at court, as was A/D/S/Sgt. Mark Wright, who was to testify from the police perspective.

At the hearing, Tim McCabe elicited evidence from Mark Wright about the events at the Park over September 4 through 6 and about the historical context of the park and the army camp. The evidence contained certain inaccuracies with respect to the events of September 5 to 7:<sup>3</sup>

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3 Mark Wright did alert Justice Daudlin to the issue of colour of right, the possibility of a burial ground (though not to evidence of protestors saying that the park was their land), the sacred site within the park, and the co-operation of Aboriginal people with respect to police checkpoints.



- the police “had some information that there were weapons that had been brought into the Ipperwash Provincial Park,” when there was only a report of a rifle in the trunk of a car at Matheson Drive, outside the park’s boundaries;
- on the evening of September 5 “what were described to [Mark Wright] as boulders, not rocks, but boulders were thrown at the [police] cruiser and the windows were taken out, and there was some damage to the fenders,” when only rocks had been thrown;
- on September 5 officers at checkpoints had heard what they believed were automatic weapons fired within the park, when the only report of rifle fire was from within the army camp;
- he was notified by radio that the damage to a vehicle in the early evening of September 6 included a broken windshield, when a windshield had not been broken in this incident;
- the evidence does not include any express reference to the presence of TRU;
- “weapons fire came from the car and the bus at our officers at almost point blank range ... I heard [over the radio] weapons fire as [*sic*] the leader saying we’re being fired upon, and then there was return fire”;
- police officers yelled “Move back ... [m]ove back” to the occupiers, when this is not captured in the recording of the commands or otherwise suggested in the evidence before the Inquiry.

To an extent, the inaccuracies are likely a result of Mark Wright reporting to the court on events for which he himself was not present (called hearsay evidence). They can perhaps also be attributed to the fact that when Mark Wright gave his evidence, he had been awake for at least thirty hours, and the last time he had slept, it had only been for three hours. At the hearing Justice Daudlin commented as follows:

The questioning that I did of the officer this morning could ... by parties who were not here, take on the appearance of an excessively critical examination of events that took place that evening, and I want the officer to know that I’m fully cognizant of the fact that he has been 30 hours plus without sleep, that he has been in the midst of the situation ... and that none of the questioning that the court was doing was meant in any way to be critical of what has happened ... but rather to put a precise point on the information that the court is seeking ...”

Mark Wright acknowledged some of the errors in his evidence at the Inquiry.

At approximately 1:00 p.m. on September 7, Justice Daudlin granted the injunction. However, one of the terms of the Order was that the OPP could not act on the injunction until the occupiers had an opportunity to be heard by the court and potentially persuade the judge to dissolve (or revoke) the injunction. Justice Daudlin ordered that the Order be served on the occupiers by posting the application and Order at the park and by dropping fifty copies of the Order from an aircraft over the park in the area of the occupiers. The latter unusual method of service had not been requested — or suggested — by Tim McCabe, and was not raised by Justice Daudlin during the hearing.

After the hearing, A/D/S/Sgt. Mark Wright called Inspector Carson to discuss the injunction. During their conversation, Inspector Carson said: “I guess it’s kind of a moot point whether we get it now or not.” In Inspector Carson’s view, the areas where the shooting took place were part of a crime scene, and as a result of what had happened, they had sufficient information to apply for the appropriate search warrants that would give them control of the area for the criminal investigation. This investigation was now the priority of the police operation; therefore, the less significant issue of an injunction and title to the property could be put on the back burner. From Inspector Carson’s perspective, getting an injunction with respect to the park had fallen in priority.

Tim McCabe, Deputy Attorney General Larry Taman, and Inspector Carson were concerned about the potential for injury and for escalation of the situation should documents be dropped from an aircraft, likely a helicopter. Larry Taman instructed Tim McCabe to tell Justice Daudlin that the service provision of the Order was dangerous and ill advised. Tim McCabe met with Justice Daudlin in chambers to try to persuade him to amend the Order by deleting the provision about dropping the Order from above. Justice Daudlin was not persuaded to change the service provision of the Order.

Larry Taman then suggested that Tim McCabe go before another judge to have the Order changed. The necessary court documents were prepared, and the lawyers arranged to appear before a judge in London the next day. On September 8, Inspector Carson gave evidence about the safety issues raised by the method of service ordered by Justice Daudlin. Justice Flinn made an Order varying the Order of Justice Daudlin, so that service by aircraft was an option available to the OPP, but not required.

The first inkling Tim McCabe had that the OPP had reservations about the injunction was on September 8. At court in London, Inspector Carson advised Tim McCabe about internal deliberations within the OPP with respect to whether they wanted to have anything further to do with the injunction proceeding.



### ***20.3.2 Chain of Events Leading to the Government Decision to Withdraw the Request for an Injunction***

Justice Daudlin's injunction Order provided that the parties were to appear again in court on Monday, September 11, 1995. At some point on Saturday, September 9, OPP officers picked up materials that the government lawyers wanted to serve on the people in the park for Monday's proceeding, but the materials were never served. Tim McCabe was working on the application on Sunday, September 10, when he received a telephone call from Larry Taman instructing him to withdraw the motion. Larry Taman does not recall who made the decision to withdraw the injunction or whether he made the decision. At the Inquiry, Tim McCabe read his notes of September 10:

Shows that we have some empathy. Provides a valuable bargaining chip.

Larry Taman: Very good idea. RFX's ... two (2) points. Take a longer view. This shooting has, I expect, set back relations between the Crown and Aboriginal peoples years. Was no great shakes before, now infinitely worse. And further the moral balance, in the eyes of the public, has, I think, probably shifted in the direction of the Aboriginal peoples. I'm not restricting that to this incident, I mean across the Board.

Coles thought it inappropriate, indeed inadvisable, to serve. Adjournment is the right idea.

Deputy Attorney General Larry Taman may have conveyed to Tim McCabe the OPP's concerns, but not the reason the OPP did not want it to proceed. It seems that on September 10, Chief Superintendent Chris Coles' view that it was inadvisable to serve the injunction played a role in the instructions that Tim McCabe received from Larry Taman. The Attorney General was not involved in the decision to withdraw the injunction,<sup>4</sup> nor was the Minister of Natural Resources (the owner of the park). The fact that Dudley George's funeral was to be held on September 11 also seems to have been a factor in this decision.

Tim McCabe drafted a statement to be read in court on September 11. Larry Taman suggested revisions, which changed the statement from saying that the OPP requested the withdrawal of the application to saying that the plaintiffs did

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4 Charles Harnick understood that the recommendation was made that the injunction be withdrawn as a result of the death of Dudley George.

not want the matter to proceed, after receiving the advice of the OPP. The application was withdrawn on September 11 and Tim McCabe read the following:

Your Honour, I am advised by the plaintiffs that in light of recent events and circumstances, and after receiving the advice of the Ontario Provincial Police, they do not wish this matter to proceed. They have therefore instructed me to withdraw the motion that is before you. The funeral of Anthony O'Brien George, the person who died last Wednesday evening, is to take place later today, to be followed by a period of mourning in accordance with tradition. The withdrawal is made out of deference to that tradition, and a desire to avoid any possible inflammation of the situation at the Provincial Park, and in order to ensure public safety. Accordingly, I am at this time withdrawing the motion. As matters proceed, it may of course become necessary for the Attorney General and the Minister of Natural Resources to bring a new motion at a later date. But it is hoped that that will not be necessary. In light of the withdrawal, the order made by Your Honour on September 7, as varied, will of course expire at 12 noon today.

Included in that expiry will be the publication deferral. The decision not to seek an extension of that part of the order has been made after consideration of the evidence given and the current Supreme Court of Canada authority concerning publication deferral orders.

The statement indicates that part of the reason for the withdrawal was respect for the George family because the funeral of Dudley George was to take place that day. In addition, there was a desire to avoid any "inflammation" of the situation at the park and to ensure public safety. This was consistent with the OPP objective of de-escalating the tensions and trying to open up a line of communication with the occupiers.

After September 11, Tim McCabe continued to be alert to the possibility that there might be another request to seek an injunction. As of September 15, he expected that he would receive instructions to obtain an injunction on notice by the following week. Elizabeth Christie prepared a memorandum dated September 18, 1995, addressing the issue of whether delay on Ontario's part in pursuing an interlocutory injunction against the occupiers of Ipperwash Provincial Park would lead to the relief being denied. On September 21, 1995, Leith Hunter, a lawyer in the MNR, sent a draft affidavit in support of an injunction to Peter Sturdy. Although the lawyers continued to work as though the injunction might be pursued, the government never renewed the application.



A factor that may have militated against the government pursuing the injunction was the fact that it could provide another forum of review for what had happened at the park on September 6, 1995. Tim McCabe wrote a memo to Acting Secretary of ONAS Yan Lazor dated March 5, 1996, outlining factors for the government to consider in determining whether to bring another injunction motion:

The government will have to decide whether it is willing to risk providing, by means of injunction proceedings, a judicial forum for review of the police operations of last September and the death that occurred on the evening of September 6.

Elizabeth Christie testified that she was aware of concerns many months later among government people that pursuing the injunction might lead to a judicial review of what had happened surrounding the death of Dudley George, and they did not want that. On the other hand, at the Inquiry, former Premier Michael Harris and others from his government denied that the reason the injunction was never pursued was to avoid judicial scrutiny of the government's and the OPP's behaviour. He testified that events such as the funeral of Dudley George and the SIU investigation and other proceedings (coroner's inquest, criminal trial, civil action) intervened. He also noted that public safety was no longer a concern as it had been when the injunction was initially sought.

Regardless of why the government might not have wanted to proceed with injunction proceedings, the police clearly did not see the use of having an injunction to enforce. The enforcement of an injunction would have greatly increased the volatility of an already volatile situation. From at least September 10, 1995, and likely earlier, Chief Superintendent Chris Coles did not want the injunction. He did not think it was an appropriate mechanism of redress because of the funeral, and because it could either hinder discussions or prompt the police to take action, neither of which would help de-escalate the situation. On September 19, 1995, Peter Sturdy noted in an e-mail to Peter Allen: "Injunction is not a preferred route from [Coles'] standpoint. My read is that [Coles] feels this will hinder discussions and/or may require him to take some action." Into October of 1995, Chief Superintendent Coles continued to make known his view that an injunction would be of no value: things had stabilized since the death of Dudley George and the use of an injunction might inflame the situation. On October 3, 1995, Ron Fox updated the re-constituted Interministerial Committee (which was re-named the Support Group as discussed further in the next section) as to a meeting between Chief Superintendent Coles and the three Deputy Ministers. At the meeting, concerns were raised as to the effectiveness of an injunction and the minutes of the meeting note that "Chris Coles felt that an injunction would be of no value."

The use of an injunction as a tool to prompt resolution of these types of First Nations disputes can be controversial, and is not the only mechanism that the government or other legal titleholder can avail itself of. I discuss several policy issues related to the use of injunctions during Aboriginal occupations and protests in Chapter 9, “Policing Aboriginal Occupations,” in Part II of my report.

## 20.4 Government Response to the Events of September 6

### 20.4.1 *Transformation of the Interministerial Committee*

The September 7 Interministerial Committee (IMC) meeting was attended by the core of people who had attended the IMC meeting on the previous days: Ontario Native Affairs Secretariat (ONAS) staff, Ron Fox (Special Advisor, First Nations), civil servants from the Ministry of the Solicitor General and Ministry of Natural Resources. The Deputy Minister of Natural Resources Ron Vrancart and Deputy Attorney General Larry Taman also attended. The September 7 meeting brought a significant restructuring of the Committee dictated by the Deputy Ministers: political staff would no longer participate in these IMC meetings relating to Ipperwash. One of the flaws of the earlier constituted Interministerial Committee was that its composition interposed a direct interface of civil servants (without the benefit of a Deputy Minister leadership presence) with political staff, causing tension that was counterproductive.

At the meeting, Larry Taman outlined the priorities in the aftermath of September 6: accurate information flow in and out of government, consistent messaging from a single spokesperson, and clear lines of decision-making authority. In his testimony at the Inquiry, Larry Taman described his message to the Committee as follows:

Well, what I said to the meeting was that I thought the tests of our work would be ... [n]umber 1, were we serious about the facts. In the course of the previous couple of days we'd had people say there were guns in the Park, there were no guns in the Park, there were women and children in the Park, there were no women and children in the Park; that it was important to know what was going on.

Secondly, that it was important to be serious about our communications. That we couldn't have everybody in government talking to the First Nations or talking to the people of Ontario. So, that there should be a single spokesperson.

And that we also had to have some order in the interaction between the public servants and the political staff, because if we didn't, we



were going to be vulnerable to the fact or the appearance or both that the political staff were interfering in the operations or that the operations people were making government policy. And those were both equal risks in my mind.

In an earlier meeting on September 7 between Deputy Minister of Natural Resources Ron Vrancart, Deputy Solicitor General Elaine Todres, and Deputy Attorney General Larry Taman, Taman had decided there would be a separate group comprised of Ministers, Deputies, and the Premier's Office, which would be called the "Nerve Centre." This separate group was meant to prevent the fact or appearance of political staff interfering in operations or operations people making government policy. The Nerve Centre would manage the incident: deal with the politics of the situation, be directly responsible to the Premier, have its own spokesperson, and connect politics to implementation on the ground. The Deputy Ministers brought the authority previously delegated to the IMC back into their own direct personal responsibilities. After September 6, the Nerve Centre met every day for the following couple of weeks.

In the aftermath of September 6, the Ministry of the Solicitor General took a much more active role with respect to Ipperwash, which had previously been a watching brief. The Nerve Centre was run from a boardroom at the offices of the Ministry of the Solicitor General. The Minister of the Solicitor General was the designated spokesperson for events on the ground. By later in the day on September 7, the Communications Branch of the Ministry of the Solicitor General had prepared a crisis management plan in relation to Ipperwash. The goals of the plan were identified:

1. ensure that all decisions and public statements are made from a common and current information base;
2. eliminate errors via miscommunication through rapid dissemination of information, assisting in maintaining/restoring public order and return to normal operations;
3. prevent crisis escalation;
4. rebuild, recover, re-establish public confidence and repair relationships;
5. prevent re-occurrence or development of a chronic crisis;
6. enable the ministry and representatives to emerge with highest possible credibility.

Reporting to the Nerve Centre, the IMC would continue without any political staff. This restructured IMC was eventually called the “Support Group.” It was to be kept small, unlike the large and unwieldy former Committee. One of the concerns expressed about the earlier constituted IMC was that its size had made it difficult to get consensus and therefore, it could not act quickly.

The mandate of the new IMC or Support Group was to provide advice to the Deputy Ministers, and to implement direction received from the Deputy Ministers. The professional civil servants would gather information and present various options to Deputy Ministers, who would filter the options and present them to political staff and decision-makers. The Deputy Ministers would act as liaisons between the new Nerve Centre and the Support Group. The Support Group was concerned with managing communications regarding the incident to prevent events from escalating within the park, with developing a preparedness strategy to anticipate and prevent any mirror or other incidents elsewhere in the province by getting a handle on where the possible Aboriginal “hot spots” were, and with providing regular updates to the Deputy Ministers.

The OPP had communication links to both the Nerve Centre and the Support Group: the link to the Nerve Centre was through the Solicitor General, as Minister responsible for the Ontario Provincial Police, and the OPP would continue to exchange information with the Support Group about events on the ground. The change in structure was intended to make transparent how the police connected with the rest of government and to separate political issues from operational issues on the ground. They restructured the Committee to more clearly separate the “political sentiments” from operational matters. Ron Fox, Special Advisor, First Nations, in the office of the Deputy Solicitor General was to be the conduit of any instructions or information that needed to be passed on to the OPP from the Nerve Centre.

One thing that drove the restructuring was a concern that some of the conversation at the dining room meeting had been inappropriate, given the presence of civil servants, including seconded members of the OPP. Strong expressions of political views by some political staff caused Larry Taman and Elaine Todres to caution others to be careful and not to cross the line of giving instructions to police officers. Larry Taman wanted to bring order to the interplay between civil servants and political staff, with a process to put the expression of strong political views in their proper place, away from civil servants. An ONAS Briefing Note prepared by Julie Jai, Acting Legal Director of ONAS, for Larry Taman and dated October 11, 1995, describes the changes that were made:

Some improvements were made as the process unfolded, such as separating political staff from public servants in the interministerial



meetings; clarifying that deputies would be the link with political staff and ministers; having joint meetings of the three deputies; creating a smaller group of key public servants to manage the government's response, with a clear lead person for each ministry who could report directly to their deputy; creating a subgroup of the three communications directors to coordinate all government communications.

It was not always clear which decisions could be made at what level, or which ministry had the lead and could make a final decision. Clarification of roles, leads on various issues and decision-making authority would be helpful. It might be useful to set up a mechanism to facilitate consultative decision-making by the three ministers, to ensure coordinated and quick decision-making.

It is suggested that in future, potential emergencies should be coordinated through an interministerial officials group (without political staff) of key ministries (chaired by ONAS), with direct reporting to respective deputies. The procedures for the interministerial group should be reviewed and revised, taking into account lessons learned from this process and input from deputy ministers. Revised procedures could also address issues such as how to handle multiple emergencies simultaneously, how to improve communications with non-Aboriginal and Aboriginal stakeholders, and how to improve coordination with the federal government.

Of critical importance, political staff (such as Deb Hutton and Jeff Bangs) were no longer part of the newly constituted IMC or Support Group. The Deputies felt that a lot of the discussion at the earlier constituted IMC meetings, prior to September 7, had dealt with operational details that should not have been discussed by political staff. The reconstitution of the IMC was meant to demarcate the lines more clearly and keep the politicians focussed on political policy implications. Accordingly, policy discussions were now to occur at the Nerve Centre among political actors, while discussions concerning implementation were held at the Support Group meetings among civil servants.

After September 7, the atmosphere at ONAS changed significantly: there was now an aura of secrecy around anything related to Ipperwash. The civil servant members of the IMC were told that the minutes of the Committee should not be a matter of public record, which they understood to mean that the record of their meetings on September 5 and 6 should not be available to the public. The civil servants felt that they could not say anything about Ipperwash to anyone. They

were aware of the potential for a coroner's inquest, public inquiries, and civil actions and that information therefore had to be carefully guarded. Individuals who continued to deal with this matter as part of their jobs felt isolated: there was no one they could talk to about it, including colleagues, and this unspoken veil of silence caused distress to some of the affected civil servants. Some people did not talk to one another because they were afraid of adverse consequences.

I refer the reader to Chapter 12, "Police–Government Relations," in Part II of my report, where I make recommendations concerning the appropriate mechanisms that ought to be implemented to ensure that there is neither perceived nor actual interference by the government with active police operations. Some of the reforms instituted by the Harris government in relation to the reconstitution of the Interministerial Committee are consistent with my recommendations, though I offer further recommendations aimed at improving the clarity, transparency, and accountability of the government–policing relationship, including the proper role of the Solicitor General in relation to the OPP.

#### ***20.4.2 Restricting Information Flow***

On September 7 or 8 Chief Superintendent Chris Coles, Peter Sturdy, and Les Kobayashi met in Grand Bend at the request of Chief Superintendent Coles. At the meeting, Chief Superintendent Coles told Les Kobayashi to be very cautious about disseminating information from the OPP Command Post in Forest. Les Kobayashi took Coles' caution as a criticism of his decision to pass along information he had received from command post briefings to Peter Sturdy. Until that point, it had never been clearly defined what information he should or should not report to the MNR when his source of information was the command post. The OPP had not told him whether the information he was receiving was reliable intelligence or un-verified speculation: Les Kobayashi had simply passed on what he thought was important. After Chief Superintendent Coles cautioned him, Les Kobayashi qualified the information he received from the command post as to whether it was intelligence, factual, or unverified before he communicated police information to his colleagues at the MNR.

In the three years following September 6, Les Kobayashi did not receive any direction from any of his superiors with respect to whether he should perform any filtering of the information he received from the OPP with respect to an incident such as Ipperwash. It was his understanding that an MNR liaison person would continue to attend at the OPP Command Post in an incident such as this. Les Kobayashi testified it would be helpful for someone in his position to have direction from MNR: a clear definition of responsibilities and how to do the job.



He thinks it would be valuable to have more specific training on how an MNR person in that situation might deal with a First Nations occupation and protest.

In the days following September 6 Kobayashi had a number of meetings with Chief Superintendent Coles and/or Superintendent Parkin. He testified that their conduct suggested an intention on their part to de-escalate the situation.

Readers are again referred to Chapter 12, “Police–Government Relations,” in Part II of my report, which offers further analysis defining appropriate lines of communication between an active police operation and government, and measures to safeguard the integrity of that information flow.

#### ***20.4.3 The Official Government Stance: No Negotiations until Occupation Over***

On September 7, 1995, Gordon Peters, Ontario Regional Chief of the Chiefs of Ontario, wrote to Premier Harris, urgently requesting a meeting between Premier Harris, himself, Chief Tom Bressette, and Council members of the Kettle and Stony Point First Nation:

This letter is an urgent request for a meeting with you as soon as a suitable time can be arranged to address the critical situation that has arisen in the territory of the Kettle and Stony Point First Nation at Ipperwash Provincial Park ...

Your direct intervention in this matter is required in order to prevent further injury and bloodshed. You must take immediate action to remove the provincial police force from this area and allow the people of this First Nation to diffuse the situation in a manner satisfactory to them.

This unfortunate incident is a clear indication of the problems that are developing in the relationship between the First Nations in Ontario and the provincial government. It is crucial that we begin a dialogue that will address immediate issues between us and establish a framework for a future relationship.

I believe that there can be more effective and constructive solutions to these matters that are less confrontational than the one that has occurred in Ipperwash Park.

No response to this letter was received on September 7 or the days immediately following. The Chiefs of Ontario office tried without success to contact

people in the Premier's Office to schedule a meeting or otherwise obtain access to the Premier.

Although civil servants at the IMC discussed establishing contact with Chief Tom Bressette of Kettle and Stony Point First Nation, making courtesy calls to Aboriginal leaders, and considering the use of Aboriginal facilitators or Elders, the government did not eagerly pursue any of these options.

On September 7, 1995, Premier Harris said on *The World Tonight*, a televised news program:

We are very much concerned about safety. We're very much concerned ... for those who are there, and the safety of all concerned. This is a matter with the police and if Ovide Mercredi wishes to discuss the removal of the illegal occupation he should do so with the police.

Consistent with the refusal to communicate with the Aboriginal people while the occupation continued, on September 7, Bill King, Executive Assistant to the Premier responsible for MPP liaison, sent Marcel Beaubien, MPP for Lambton, a fax suggesting a response to an invitation to meet with Chief Tom Bressette:

Thank you so much for the kind offer I received today to meet with you.

As your MPP, I would be more than happy to meet with you following a peaceful resolution of the current situation now underway at Ipperwash Provincial Park.

Thanking you for letting me know of your desire to work in a co-operative way on issues of mutual interest to the people of Lambton ...

The advice from the office of the Premier was not to engage or appear to engage in negotiations until after the occupation had been resolved.

On September 8, 1995, Gordon Peters, as Regional Chief, Chiefs of Ontario, wrote to Ron Irwin, the federal Minister of Indian and Northern Affairs Canada, to request his involvement in the Ipperwash situation because "some form of senior Canadian political involvement is required [and] so far, Premier Mike Harris has shirked his responsibility."

On September 8, 1995, Solicitor General Runciman participated in a conference call with Chief Tom Bressette, Grand Chief Joe Hare of the Union of Ontario Indians, Regional Chief Gordon Peters, and National Chief Ovide Mercredi of the Assembly of First Nations. The call was organized by the Ministry of the Solicitor General in response to a request for a meeting with the Premier. The



Premier's Office decided that Runciman would represent the government in the call. Regional Chief Gordon Peters described the purpose of the call as "trying to get somebody on the line to ... take some responsibility ... trying to get any [p]rovincial Cabinet Minister to have them — have them understand the seriousness of the situation that was going on ... trying to get people to de-escalate the police." During the call, Runciman repeated the message from the Premier's Office that the Premier would not attend a meeting until the occupation of the provincial park was over. Chief Tom Bressette indicated that an injunction was unnecessary and that the idea of dropping copies of the Order from a helicopter was an insult. He did not understand the concern with the park — there was nobody in the park, a life had been lost, and there had always been a concern for the land. National Chief Ovide Mercredi indicated that if the Premier continued to refuse to meet, they were prepared to go to the government offices with media in tow and do a sit-in.

Meanwhile, the Premier maintained his position that there could be no discussions. In comments to the media on September 8, Michael Harris said:

This is an illegal occupation; they are trespassing on land that belongs to the Crown. This is a matter for the OPP to deal with, so for there to be any discussions over what we all want to be a safe and peaceful conclusion to this illegal occupation, it should be with those in charge of that, and that's the OPP ... I'm not going to discuss [land claims in general and other native issues] while there's an illegal occupation on ... we are not in the position to be asked to come to the table to negotiate while there is an illegal occupation that is on ... I don't know what there is to negotiate. As far as official word that we have, the natives know of — officially from the chiefs, from anything up until this situation developed, there was no claim on this land. There was a clear understanding from the '72 study that there was no burial ground. So I don't know how anybody could have anticipated a shift, or somebody suggesting, when all the studies, all the official word is, there is no claim; there is no burial ground ...

On September 11, there was a telephone call between Regional Chief Gordon Peters and Attorney General Charles Harnick. The two may also have had subsequent meetings over the fall of 1995. Harnick communicated the government's message throughout: until the people were out of the park, there would be no negotiations and there was no role for the government; it was a police matter, not a political matter.

On September 12, the first meeting between the Premier and First Nations leaders finally occurred. Premier Harris, Attorney General Charles Harnick, and Deputy Attorney General Larry Taman met with National Chief Ovide Mercredi,

Chief Tom Bressette, and Grand Chief Charles Fox of the Nishnawbe-Aski Nation. The Premier and his staff were initially reluctant to meet with National Chief Mercredi, lest it appear to be an engagement in negotiations when the government had already said there would be no negotiations regarding the park. When Mercredi's request to meet with the Premier was initially turned down, he showed up at the legislative building as he had promised he would do during the conference call with Solicitor General Runciman. He was accompanied by Grand Chief Fox and Chief Bressette and was determined to stay until the Premier agreed to meet. A swarm of TV cameras and media people around Mercredi effectively blocked passage in a hallway in the Legislative Building. From the hallway, National Chief Mercredi, Grand Chief Fox, and Chief Bressette were escorted into an office and were told that the Premier would not see them. Mercredi said they would stay until he did. Eventually, the Premier agreed to meet with the Aboriginal leaders.

By all accounts the meeting got off to a somewhat tense start. In terms of what was said or discussed, there are some differences in the accounts. Chief Bressette testified at the Inquiry that the Premier "walked in and the first thing he said was, 'Let me be very clear about this, I didn't tell anybody to kill anybody.'" Michael Harris, Charles Harnick and Larry Taman, do not recall this being said. Chief Bressette said that the Premier emphasized that he was not involved in what was happening, that it was a police matter. Ovide Mercredi recalls the following issues being discussed: the use of the term "illegal occupation" by the government; the resolution of the conflict; and the calling for a Public Inquiry instead of an internal investigation. Mercredi hoped to get the commitment of the Premier to engage in discussions with respect to the park — not in terms of an ultimate resolution to the land dispute but in terms of agreeing on a process to be used to reach a resolution of the issue. The Premier recalls expressing support for the return of the army camp to the Aboriginal people, discussion of a potential burial ground in the park, the communication of the government's willingness to look at land claims or the burial ground allegation if the occupation ended, and the government asking for help in ending the occupation.

On September 12, after the meeting, Premier Harris issued his first press release on the Ipperwash occupation:

Just over a week ago, a group of individuals illegally seized and occupied Ipperwash Provincial Park. At that time, I said the issue was a police matter. That position has not changed.

Earlier today, representatives of the First Nations came to Queen's Park to specifically discuss the situation at Ipperwash.



I believe First Nations leaders should be treated with courtesy and respect. Therefore, I personally delivered the government's message that we will not discuss the illegal occupation of Ipperwash Provincial Park.

As I have said on several occasions since the Park was seized — and I repeat today — these matters are in the hands of the Ontario Provincial Police and the Special Investigations Unit.

That having been said, there are a great many issues other than the illegal occupation of Ipperwash Provincial Park between the Government of Ontario and the First Nations people. The process over the last many years has not resolved the mutual concerns of natives and non-natives. Our government is committed to restoring hope, economic opportunity and jobs for the First Nations people of Ontario.

The Minister Responsible for Native Affairs and his officials will continue to work with First Nations to address these issues.

It is my hope that the illegal occupation of the Ipperwash Provincial Park will end quickly and peacefully so that the 250 residents evacuated from the area can return to their homes. I have called upon the Chiefs to use their offices to assist the OPP in peacefully achieving that goal.

The press release reflected the government's unmoveable stance with respect to the "illegal occupation." It failed to mention the allegation of the burial ground in relation to which supporting documents had been received from the federal government the day before. Although forced to meet with First Nations leaders, the Premier's resolve remained that there would be no discussions until the occupation was over.

On the same day that Premier Harris was confronted by the First Nations leaders in Toronto, Solicitor General Robert Runciman, Ron Fox (First Nations, Special Advisor, to the Solicitor General), Terry Simzer, a Legislative Assistant in the Ministry of the Solicitor General, and Marcel Beaubien, the local MPP for Lambton, met with local elected officials and residents at Mr. Beaubien's office in Petrolia. The purpose of the meeting was to discuss the concerns of some of the local non-Aboriginal people regarding safety and the relationship between themselves and the First Nations community. The meeting was initiated by Marcel Beaubien to demonstrate to the Solicitor General the seriousness of the issue and the level of tension and frustration in his constituency. Robert Runciman

and the other government officials indicated to the community members gathered there that the government was aware of residents' concerns about their properties, that Mr. Beaubien was keeping the government apprised, that they were doing what they could to calm the waters and ensure that the situation would be resolved, and that the park-area residents could return to their properties at an appropriate time. The Ministry of the Solicitor General issued a press release that day:

... "I came here today to assure the people of North Lambton, through their elected representatives, that the government of Ontario is committed to preserving public safety and to ensuring a peaceful conclusion to the illegal occupation of the provincial park," Mr. Runciman said.

Mr. Runciman later met with some of the park-area residents who left their houses after the occupation started.

"I wanted to meet some of the residents of the area to hear their concerns first hand and to assure them that we are doing everything we can to get them home as soon as possible," Mr. Runciman said. "I also wanted to make it clear to them [the residents of the area] that there is one code of law for all Canadians and that this government will not be party to any double standards." ...

"I urged all the residents of the area to remain calm and work together to help the OPP end this incident. I told them [the residents] that the Government of Ontario will support their efforts to have the federal government resolve the Camp Ipperwash issue, which everyone realizes is at the root of the current situation."

The press release repeats the key message of the government with respect to the illegality of the occupation, and is consistent with Premier Harris's message that there would be no negotiation as long as the occupation was ongoing. In contrast, First Nations leaders sought open and meaningful discussion with the government to set out a process by which to ultimately reach a peaceful resolution of the occupation.

It was not until September 29 that Premier Harris answered Regional Chief Gordon Peters' letter of September 7:

As you are no doubt aware, I met with Assembly of First Nations Chief Ovide Mercredi on September 12th, and at that time I reiterated my earlier position that this is a police matter. The province will not nego-



tiated with the occupiers until they leave Ipperwash Provincial Park. These matters remain in the hands of the police and the Special Investigations Unit....

Chief Peters interpreted the letter as signalling the Premier's intention to cut off communications. The Premier's message was entirely consistent with his earlier position expressed through the media: that there would be no negotiation as long as the occupiers were in the park.

Several general issues regarding negotiations during an Aboriginal occupation or protest are discussed in Chapter 9, "Policing Aboriginal Occupations," in Part II of my report.

#### ***20.4.4 "Revelation" of Burial Ground Documents by Canada***

On September 11, the Department of Indian and Northern Affairs (DIAND) issued a press release announcing that its Minister, Ronald A. Irwin, had accepted the invitation of Chief Tom Bressette to visit the Kettle and Stony Point First Nation. A meeting was scheduled for September 13. The purpose of the meeting was to clarify inaccurate media reports, and to provide a forum for discussing the transfer of the army camp back to the First Nation. Representatives of the Department of National Defence were also to attend.

On September 12, the federal government advised the province that they had found some archival material showing that the Council of the Kettle and Stony Point First Nation had advised the provincial Deputy Minister of the Department of Lands and Forests (the predecessor to the current Ministry of Natural Resources) in 1937 that there was a burial ground on the proposed site of the park and requesting that the burial ground be preserved, marked off, and fenced. DIAND Deputy Minister Scott Serson sent Deputy Attorney General Larry Taman a letter. To this letter he attached the following: a letter dated August 13, 1937, from the Indian Agent to Mr. MacInnes, Secretary, Department of Mines & Resources, Indian Affairs branch; a resolution of the Council of the Kettle and Stony Point First Nation dated August 13, 1937; a letter dated August 17, 1937, from Mr. MacInnes to Mr. Cain, the Deputy Minister, Department of Lands and Forests for Ontario; and a letter dated August 19, 1937, from Mr. Cain to Mr. MacInnes. Larry Taman's reaction to receiving the documents was the realization that the provincial government now had an important issue to consider. Regardless of whether there was a formal claim from the First Nation, there was an indication of a basis for such a claim.

Also on September 12, an official from DIAND in Ottawa telephoned Julie Jai, Acting Legal Director of ONAS, to tell her that they had found documents

indicating that when the park was established in 1937, there was a burial site there. She immediately asked him to send her copies of the documents. He faxed her a number of documents, which were the same as those sent from Scott Serson to Larry Taman. Julie Jai in turn advised Yan Lazor, who was Acting Secretary to ONAS, and the three Deputy Ministers at the Nerve Centre of this information. She also spoke to MNR because the information was related to their park. Responding to the burial ground issue was regarded as MNR's responsibility because it was their park, and they frequently dealt with assertions of burial grounds in provincial parks.

In his testimony at the Inquiry, Premier Harris took a negative view of the manner in which the federal government revealed the burial ground documents. He saw it as a political ploy by the federal Minister, Ronald A. Irwin, to try to divert attention from the federal government's slowness and ineffectiveness in dealing with the return of the army camp. At the time the documents came to light, Minister of Natural Resources Chris Hodgson thought that the federal government should have shared the information they had with the province long before they did. Solicitor General Robert Runciman was also concerned about the way the revelation of these documents was handled by the federal government. However, Harris and Hodgson both said at the Inquiry that had they known of the letters prior to September 7, they would not have taken a different approach to the occupation of the park. No discussions took place between Premier Harris and the federal government or Minister Irwin about the release of the burial ground documents.

On September 14, officials at the Province of Ontario uncovered the same documents in relation to the burial ground. Daryl Smith, Information Services Coordinator at the Chatham office of the Ministry of Natural Resources faxed a collection of historical notes he found in his files related to the "beginnings" of Ipperwash Provincial Park. The historical notes include the August 17, 1937, letter to the Deputy Minister of Lands and Forests and his August 19, 1937, response, which refer to the preservation of "the old Indian cemetery ... located within the boundary now being developed as a Park."

On September 13, the federal Minister of Indian and Northern Affairs, Ron Irwin, visited the Ipperwash area and issued a press release. Some members of the Ontario government saw this as an example of the federal Minister not taking care to consult and communicate with the province. Minister Irwin went to the area of a significant event where a death had occurred, for reasons not clear to the province, and without any particular communication to the province, according to Deputy Attorney General Larry Taman.

Chief Tom Bressette was angry that the Minister only came up with the documents after everything had happened and thought that the information about



burial grounds in the park should have been communicated to the provincial government much earlier. Regional Chief Gordon Peters viewed the production of the documents as being in the interests of the federal government in their “back and forth” battle with the provincial government regarding land-related First Nations issues.

The Department of Indian and Northern Affairs entered into a Memorandum of Understanding with the Chippewas of Kettle and Stony Point First Nation on September 13, 1995, as part of Minister Irwin’s trip to the area. It provided, in part:

1. The Federal Government has proposed that a negotiator directly responsible to the Minister of Indian and Northern Affairs and Minister of National Defence be appointed within one (1) week ...
2. The Federal Government is committed to transferring the land in dispute (namely former Camp Ipperwash) to the First Nation people as reserve land.
3. The Federal Government is committed to working out a mutually satisfactory environmental clean-up of the property, at the cost of the federal government.
4. The First Nation people will be extensively involved in the aftersaid [sic] clean-up including the environmental assessment process.
5. Adequate funding and full cooperation will be provided by the Department of Indian and Northern Affairs to the First Nation people to identify and protect the burial sites in the provincial park and the First Nations grievance surrounding the parks creation. In light of documents discovered yesterday from 1937 confirming a burial site, the federal government urges the provincial government to fully review all of its records pertaining to the park.
6. The Department of National Defence will consider funding a veterans monument at the lands of Stony Point.
7. The Federal Government is committed to providing the resources to work with the First Nations people of Kettle and Stony Point to developing a healing process in the community.

National Chief Ovide Mercredi’s viewed the terms of the Memorandum of Understanding as suggesting that the federal government was willing to be helpful, because the terms reflected concerns of the Aboriginal community, such as the environmental cleanup of the army camp. He also thought that the Memorandum of Understanding showed the federal government’s commitment

to resolving the land question, and was important in clearing the path beyond the immediate conflict by suggesting a process in which they could engage.

Under the Memorandum of Understanding reached with the federal government, funding was to be provided to the Aboriginal community to verify the burial ground allegation. Although funding may have been provided, at the time he testified Peter Sturdy was not aware that any investigation had been undertaken to resolve the issue of whether there is a burial ground within the park. In the wake of the federal government's revelation of documents and the Memorandum of Understanding, staff of the Ministry of Natural Resources searched their files to try to determine if the documents disclosed by the federal government had ever been seen at the park level. On January 15, 1996, Les Kobayashi and Assistant Park Superintendent Don Matheson met with Marilyn and Bob Dulmage to follow up on information regarding bones found years earlier in the park while Marilyn Dulmage's father had been Park Superintendent. Mrs. Dulmage confirmed that Park Superintendent Arnel had found bones when they were constructing the bathhouse in the park. They took photographs. The Ministry of Natural Resources undertook some further efforts to investigate the burial ground allegation but to date it has not been resolved.

Justice Robert Reid was appointed as a fact-finder in relation to the army camp issues pursuant to the Memorandum, and prepared a report for the federal government in November 1995. Chief Tom Bressette said that the negotiator appointed under the Memorandum was dictated by the federal government, and was unacceptable to the First Nation.

Many OPP officers were given the option of going home either after a briefing about the federal government–First Nations Memorandum of Understanding, given at 12:30 a.m. on September 14, 1995, or first thing the next morning. There were to be no more checkpoints, a reduction in the number of available TRU and ERT teams, and the departure of the helicopter and canine units from the area. Approximately 80 per cent of OPP staff posted to the Ipperwash area would return home.

A feeling persisted within the provincial government that the Government of Canada was going its own way and not paying attention to the interests or concerns of the province. Canada seemed determined to treat the return of the army camp as an isolated issue that was separate from the dispute over the park, even though many, including the occupiers, saw the two pieces of land as being interrelated. On September 29, Deputy Attorney General Larry Taman wrote to DIAND Deputy Minister Scott Serson to raise questions about the Memorandum of Understanding and to emphasize the importance of the federal government consulting with the Ontario government about its intentions in relation to Ipperwash.



Taman's letter, intended to remind Serson of a range of issues in which the province had an active interest, highlights the importance of communication:

In the MOU [Memorandum of Understanding] the federal government agreed to appoint a negotiator within one week and to develop mutually acceptable terms of reference for the negotiations. The federal government's appointment of the former Mr. Justice Robert Reid was announced late last week. What are Mr. Reid's terms of reference for these negotiations? Is it the federal government's intention to discuss matters involving Ipperwash Provincial Park? As you are aware the Ontario Provincial Police are still trying to deal with an illegal occupation of the park and any negotiations involving the federal government could clearly have an impact on the park occupation.

In paragraphs two, three, and four of the MOU, the federal government discusses the commitments with respect to Camp Ipperwash. Certainly the provincial government supports a speedy resolution of the outstanding issues around Camp Ipperwash as we believe that these problems are at the root of the occupation of the provincial park. The provincial government needs to be kept informed about developments at Camp Ipperwash.

In paragraph five of the MOU, the federal government promises adequate funding and full cooperation with respect to the identification and protection of burial sites in the provincial park.... There is also a reference in the MOU to addressing the "First Nation's grievance surrounding the park's creation." Is the federal government considering accepting a land claim in relation to the provincial park?

Paragraph six of the MOU refers to a veteran's monument at the lands of "Stony Point." Where is this monument to be located?

Another fundamental issue that appears to be at the core of the Ipperwash dispute is a representation issue between the "Stoney Pointers" and the Chippewas of Kettle Point and Stony Point. It would appear that any resolution of this matter will require the federal government to address the issue of representation, and we would appreciate knowing what the federal government's plan is in this regard ...

The Town of Bosanquet, like the province, was not getting any attention from the federal government and issued a press release on September 19, 1995, expressing its frustration with the Government of Canada:

The Solicitor General was receptive to the recommendations made and gave assurances that they would be given a high priority.

The Federal Government again refused to meet with Town officials and Council is angered and dismayed by this ... On Tuesday, 12 September, the Mayor requested a brief meeting with Minister of Indian Affairs Ron Irwin while he was in the area but was told that the Minister did not have time to meet with him.

#### ***20.4.5 Park Management Issues as Winter Approaches***

Ipperwash Park Superintendent Les Kobayashi, and to a lesser degree his direct superior, MNR Zone Manager Peter Sturdy, were involved in the negotiations with respect to winterization of the waterlines and buildings in the park. Due to the dynamics of the situation, the bulk of these negotiations were conducted by the OPP on behalf of the MNR. The issue with respect to winterization was the possible damage to park facilities that would likely occur as a result of winterization not being carried out, since MNR did not have access to the park. The estimated cost to replace damaged park facilities if winterization did not occur was around \$450,000.

Les Jewell, Layton Elijah, Detective Constable George Speck of the OPP, and Les Kobayashi met on November 25, 1995, to discuss the winterization of the occupied park. On December 2, Chief Superintendent Coles, Superintendent Parkin, Sergeant Hudson, Miles Bressette (Chief of the Kettle and Stony Point First Nation Police Service), Bruce Elijah (negotiator and peacekeeper on behalf of the residents of the former Stoney Point Reserve), Layton Elijah, Les Jewell, and Les Kobayashi met at the Kettle and Stony Point First Nation police station to talk about the winterization process. It was ultimately agreed that winterization, except for the maintenance building, which the occupiers intended to use throughout the winter, would take place on December 3, 1995. The park was winterized in December 1995 and has not been winterized by the MNR since.

With respect to damage to the park, Bruce Elijah directed Layton Elijah to help Les Kobayashi compile a list and costing of all damage. Bruce Elijah said that he would submit the bill to the residents of the former Stoney Point Reserve for reimbursement once the federal government compensated them with respect to the army camp. Les Kobayashi was present in the park for the winterization on December 3, and at that time was able to assess the damage. The park concession building, which housed a store and takeout restaurant, had been burnt to the ground. The damage was estimated at around \$750,000.



## 20.5 Summary of the De-escalation of Tensions and the Development of a Status Quo

In the days, weeks, and months following the events of September 6, 1995, the lines of communication between the OPP and the Aboriginal peoples concerned with Ipperwash developed and proceeded on an open and productive basis. Some progress with the provincial and federal governments occurred, at least in terms of improving the process for responding to the occupation of the park and the army camp. As a result, incremental steps were taken to not only de-escalate the tensions, but also restore a sense of peace, order, and security to those who were most affected: the people in the army camp and park, the OPP, the neighbouring cottagers, the residents at the nearby Kettle and Stony Point Reserve, and the interests of the MNR in relation to the park.

This peacekeeping process was largely effected by the willingness of Aboriginal political leaders such as Ovide Mercredi and Gordon Peters to assist in dealing with a sensitive and complicated political matter. The lack of official *Indian Act* band status of the occupiers contrasted with the status and adverse interests of the official *Indian Act* band, the Kettle and Stony Point First Nation, which had the right to assert claims over the army camp and park. As well, the Chief and Council of Kettle and Stony Point First Nation had expressed public disapproval over the actions of the occupiers, most of whom were, after all, members of the official *Indian Act* band.

This process was further facilitated by the willingness of the superior officers of the OPP to separate the function of negotiations from the Incident Command and to take on this role directly on behalf of the police and, to an extent, the government, in terms of MNR practical interests at the park.

The process was also aided by the presence of experienced Aboriginal intermediaries, who had credibility in the eyes of all of the stakeholders: the occupiers, the OPP, the Chief and Band Council of Kettle and Stony Point First Nation, and national and regional Aboriginal political leaders.

The reconstitution of the IMC at the provincial government level also contributed to the success of the process. Its approach changed from seeking to remove the Aboriginal occupiers from the park as soon as possible through an injunction, to a more sophisticated exploration of political options and a strategy that focussed on de-escalating the tensions rather than heightening them. This was accomplished without sacrificing the government's stated position that no substantive negotiations would occur while the occupation was ongoing.

Several positive steps toward reaching a peaceful understanding (though not resolution) resulted from this integrated peacekeeping process:

1. Police visibility was reduced by pulling back the checkpoints and using blue uniformed OPP officer rather than ERT in grey uniforms without sacrificing public safety interests (September 8, 1995). Officers were “pushed back in the bush” in the sense of staying out of sight, while keeping the same complement of OPP personnel.
2. Patrolling responsibility was assigned to the Kettle and Stony Point Police Service and later to the Anishnabek Police Service, so that public order and safety was still protected to everyone’s satisfaction.
3. Access to the crime scene, the school bus, and the car was eventually secured for the CIB and SIU investigations in co-operation with the First Nations Investigation Team.
4. The occupiers who had outstanding warrants for arrest surrendered voluntarily to the OPP.
5. The application for an injunction was ultimately withdrawn, thereby aiding in de-escalating the situation.
6. The funeral of Dudley George was able to proceed with due dignity and respect in the Aboriginal tradition without the visible presence of OPP or the distraction of the government injunction application, which was scheduled to have proceeded the day of the funeral, but was withdrawn by the government, in part as a gesture of respect and good will.
7. A Memorandum of Understanding was entered into by the federal Department of Indian and Northern Affairs, the Assembly of First Nations, and the Kettle and Stony Point First Nation, setting out the process for negotiating the return of the army camp to the Aboriginal people.
8. MNR successfully negotiated access to the park, enabling them to winterize and conduct an inventory of property damage to the park.

The public was informed of the productive nature of the OPP–Aboriginal peoples dialogue through an OPP press release issued on September 10, 1995, by Chief Superintendent Chris Coles, in which he expressed his appreciation to the First Nations’ leaders for their co-operation.

## **20.6 Summary of Related Legal Proceedings**

Several legal proceedings resulted in the wake of the confrontation between the OPP and occupiers in the sandy parking lot in the late evening hours of September 6. These proceedings can be categorized as follows:



- criminal proceedings;
- the Special Investigations Unit investigations;
- the Chief Coroner’s Investigation;
- civil proceedings.

I will summarize the proceedings in their order of listing and include relevant testimony relating to those proceedings, which I heard during the Part 1 hearings. I have not listed the OPP internal disciplinary proceedings related to allegations of culturally insensitive and racist conduct, as I have devoted a separate section to those.<sup>5</sup>

### ***20.6.1 Related Criminal Proceedings***

In this category I am referencing only those matters that proceeded to trial, and not those matters that never went beyond the criminal charge or arrest stage (matters that I have canvassed elsewhere in this report). The criminal charges that advanced to trial involved one police officer (Kenneth Deane), and six Aboriginal persons (Warren George, Cecil Bernard George, Nicholas Cottrelle, David George, Stacey George, and Stewart George). Of these individuals, all charges resulted in convictions with the exception of Cecil Bernard George and Nicholas Cottrelle, who were both acquitted. It is also of note that only Warren George served any period of incarceration.

A brief review of the convictions and acquittals will provide added insight into the events surrounding the death of Dudley George.

### ***20.6.2 R. v. Deane***

The highest profile criminal case that went forward to trial involving the events at Ipperwash was the case against an OPP officer and TRU team member, the late Kenneth Deane. Tragically, Kenneth Deane died in a motor vehicle accident just weeks before he was scheduled to testify before the Inquiry. Hence I did not have the benefit of hearing his testimony in person. Instead, I have relied on several documents filed as exhibits to the Inquiry, including the sworn testimony of Kenneth Deane given at his criminal trial, and the reasons for conviction and sentencing rendered by the presiding trial judge.

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<sup>5</sup> See section entitled “Cultural Insensitivity” later in this chapter for a detailed discussion regarding the discipline proceedings, and my own analysis regarding the role of cultural insensitivity and arguably racist police conduct as contributing factors to the events surrounding the death of Dudley George.

Kenneth Deane joined the OPP in 1985. He became a full-time member of the elite Tactics and Rescue Unit in 1987. On September 6, 1995, he held the rank of Acting Sergeant. Acting Sergeant Deane was charged with criminal negligence causing death in relation to Anthony O'Brien ("Dudley") George. Ken Deane never disputed the fact that he discharged the fatal bullet, or that he discharged his long gun intentionally in the direction of an Aboriginal occupier, though he did not know at the time that the object of his discharge was Dudley George. In essence, Ken Deane testified that the reason why he discharged his long gun at an Aboriginal occupier in the sandy parking lot area was because he believed the occupier was armed with a gun and posed a risk to the safety of members of the CMU. The trial judge, Judge Fraser of the then Ontario Provincial Court, rejected this aspect of Ken Deane's testimony, favouring instead that of Sergeant Hebblethwaite, who testified that he saw an Aboriginal occupier, whom Judge Fraser found was also Dudley George, at the same time as Ken Deane, but could see that the object in the man's hands was a stick or pole and not a firearm of any kind, even though he was behind Kenneth Deane and further away. Judge Fraser concluded, in rendering his conviction of Kenneth Deane:

I find that Anthony O'Brien (Dudley) George did not have any firearms on his person when he was shot. I find that the accused Kenneth Deane knew that Anthony O'Brien Dudley George did not have any firearms on his person when he shot him. That the story of the rifle and the muzzle flash was concocted *ex post facto* in an ill fated attempt to disguise the fact than an unarmed man had been shot.

Accordingly, the trial judge rejected Ken Deane's defence, and convicted him on the charge of criminal negligence causing death in relation to the shooting death of Dudley George. Specifically, the trial judge found that Ken Deane did not have a reasonable basis for believing that Dudley George was endangering the lives of any of the police officers when he shot him. On July 4, 1997, the trial judge sentenced Acting Sergeant Deane to a conditional sentence of two years less a day to be served in the community, 180 hours of community service, and prohibited Acting Sergeant Deane from owning or possessing any firearms or other offensive weapons during the term of the sentence.

Ken Deane's appeals to the Ontario Court of Appeal and the Supreme Court of Canada were unsuccessful.

At the Inquiry, Commissioner O'Grady accepted Judge Fraser's conclusion that there was no evidence of firearms in the park.



Ken Deane was also subject to a disciplinary proceeding under the *Police Services Act* in September 2001. At that proceeding he was found to have committed misconduct, flowing from the shooting death of Dudley George, and was ordered to submit his resignation within seven days, failing which he would be dismissed from the OPP.

Some time was spent in the Inquiry exploring the fundraising efforts of the Ontario Provincial Police Association (OPPA) in support of Ken Deane's appeal. The OPPA commissioned a pin that bore Ken Deane's badge number and the OPP emblem. I did not hear any testimony that suggested that the pin was worn on OPP uniforms by officers on duty, or that it was otherwise displayed in any inappropriate manner. Rather it was a private fundraising initiative to provide funds to a fellow officer seeking to advance an appeal, which was within his rights to do. A T-shirt was also produced as a fundraising item for Ken Deane's appeal. Again, there was no evidence that suggested that the T-shirt was inappropriate, provided it was not worn in public by police officers.

Similarly, some time was spent in the Inquiry exploring the use of certain OPP officers to assist Ken Deane's legal defence team as part of their duties. This assistance was short term, as Commissioner O'Grady decided subsequently that the optics of such assistance would not look favourably on the OPP. However, there was no evidence to suggest that the assistance rendered by certain OPP officers caused any interference with the due administration of the criminal justice system in relation to the trial and conviction of Ken Deane. Commissioner O'Grady stopped the assignment of police officers to assist in the defence as part of their official duties, and Commissioner Boniface agreed with that decision on the basis that it was inappropriate for OPP officers to render assistance as part of their official duties. I am in full agreement with Commissioner O'Grady's decision.

### 20.6.3 *R. v. George (Warren)*

On February 12, 1998, Warren George was convicted of criminal negligence in the operation of a motor vehicle pursuant to section 221 of the *Criminal Code* and assault with a weapon (a motor vehicle) pursuant to section 267(1)(a) of the *Criminal Code*. Warren George testified before this Inquiry and admitted that he was the driver of the car, a Chrysler New Yorker, which followed the yellow school bus into the sandy parking lot. The Court rejected his defence that he lacked intent to cause contact when he drove from the sandy parking lot and onto East Parkway Drive where he struck certain OPP officers. Judge Pockele of the then Ontario Provincial Court concluded:

The evidence of the accused is clear, his driving behaviour was the culmination of a series of escalating, violent and assaulting behaviours. Again, he knew the occupation of Ipperwash Park was without consent of the Ministry of Natural Resources, he anticipated a problem with the Ministry of Natural Resources and the police as a result of the occupation, he knew a police scanner was monitoring communications, the occupiers were armed, lookouts alerted of the approaching CMU. He said he wasn't going to let the police push us back or resist, and he wasn't going to let the police take him. He threw sticks and rocks because the police were "trying to intimidate us", not because he feared being touched or hurt by the police.

In Judge Pockele's judgment, the reference to "armed" appears to refer to weapons other than firearms, such as rocks, bats, pipes, sticks, and fire bands (e.g., burning sticks).

Warren George was convicted on both counts and sentenced to six months' imprisonment on each count to be served at the same time, and suspension of his driver's license for two years. He lost his appeal to the Ontario Court of Appeal.

#### 20.6.4 *R. v. N.C.*

On September 6, 1996, Nicholas Cottrelle was a minor. Hence, his initials were used in lieu of his name in the criminal proceedings that relate to his criminal charges. Nicholas Cottrelle testified as a witness before this Inquiry, and consented to the release of the related criminal proceedings and the publication of his name in connection with the criminal proceedings against him.

Nicholas Cottrelle was charged as a young offender in relation to his actions in driving the yellow school bus into the sandy parking lot and into the Crowd Management Unit (CMU). Specifically, he was charged with operation of a motor vehicle in a manner dangerous to the public, contrary to Section 249(1)(a) of the *Criminal Code*, and further with assaulting members of the Emergency Response Team (deployed as the CMU) with a weapon, namely a motor vehicle, contrary to section 267(1)(a) of the *Criminal Code*.

The Court found as an initial step in its analysis that the bus was used for the purpose of threatening or intimidating the police and therefore was a weapon. The Court next found that the actions of Mr. Cottrelle were intentional, in that he intended to charge at the police line and to use the school bus as the instrument for that purpose. Fortunately, Mr. Cottrelle did not strike any of the police officers. Nonetheless, the Court found that Mr. Cottrelle had no intention of stopping



and that he drove the bus intentionally at the police officers without regard as to whether or not they would be struck, and hence in a dangerous manner.

However, Provincial Court Judge Graham ultimately concluded that Mr. Cottrelle's actions were justified insofar as he was attempting to rescue Cecil Bernard George from the beating he appeared to be receiving from the police. The trial judge found that Nicholas Cottrelle witnessed eight to ten people around Cecil Bernard George, hitting him with batons and kicking him. His Honour also found that as Mr. George was being dragged to the rear of the confrontation, that the individuals continued to hit and kick him. Hence, it was reasonable for Mr. Cottrelle to assume that a breach of the peace was occurring and that Cecil Bernard George was being assaulted. The judge also found that the degree of force exercised by Nicholas Cottrelle, namely, driving a bus into the fray to "rescue" Cecil Bernard George, was reasonable in the circumstances and that his "actions would have been senseless, reckless and futile" had he gone into such a confrontation without the protection of the bus.

Ultimately, while the elements of the offence were made out, so was the defence of justification under sections 30 and 37 of the *Criminal Code*. As a result, Nicholas Cottrelle was acquitted of all charges.

#### **20.6.5 *R. v. George (Cecil Bernard)***

Cecil Bernard George was charged with three offences: assaulting Staff Sergeant Wade Lacroix, a peace officer engaged in the execution of his duty; assaulting Wade Lacroix with a weapon, namely, a metal pipe or bar; and mischief under section 430 of the *Criminal Code* by interfering with the lawful use or enjoyment of property, namely, the public roadway at Army Camp Road on East Parkway Drive. Cecil Bernard George was acquitted without the need to call any defence evidence in response to the evidence led by the Crown (known as a directed verdict). In other words, the Crown did not meet its threshold requirements to establish the basic elements of the offences.

The trial judge held that there was no doubt that Cecil Bernard George had struck police officers during the confrontation and that he also was struck by police officers. However, there was a reasonable doubt as to whether he was the Aboriginal person who came into physical contact with Wade Lacroix. Hence, the matter was decided in favour of Cecil Bernard George on the basis that the Crown had not established a proper identification of the alleged culprit who struck Wade Lacroix. This is ironic given the basis of the finding of the SIU investigation into the alleged police beating of Cecil Bernard George, which, as will be discussed below, was thwarted on the basis of the inability of the SIU to identify the police officers who allegedly struck Cecil Bernard George. It is also notable that in

giving evidence before the Inquiry, Wade Lacroix confirmed that he did not know the identity of the person who broke his shield, and confirmed that at the criminal trial of Cecil Bernard George he testified that he did not know with certainty who assaulted him.

The charge relating to public mischief was dismissed on the basis that there was no evidence that Cecil Bernard George threw any objects onto the public roadway, or that any such objects were thrown beyond the sandy parking lot.

#### ***20.6.6 R. v. George (Abraham David) and R. v. George (Stacey)***

The Inquiry did not attempt to catalogue all the charges and convictions or acquittals that resulted from the police investigation into the various events of September 4 to 7, 1995, with the exception of the charges resulting from the confrontation reviewed above. However, some of those results came to light during the testimony of the witnesses.

The Inquiry heard evidence from two individuals who were charged and convicted with respect to events over the course of September 4 to 7, 1995, concerning the occupation but not the confrontation on the evening of September 6.

Abraham David George was charged with various offences as a result of the events of September 4 to 7, 1995. These included two counts of assaulting an officer (one with a flare during the evening of September 4 during the initial takeover of the park), two counts of having a weapon dangerous to the public peace, mischief to property (a St. John Ambulance vehicle in the abandoned TOC site on September 7), and theft over \$5,000 (OPP prisoner van and St. John Ambulance vehicle on September 7, 1995). He pleaded guilty with respect to the mischief charge, and was convicted of assaulting an officer by throwing a flare at him. The other charge involving assault of an officer was withdrawn. He was also convicted of possession of property obtained by crime under \$5,000.

Stacey George was charged with mischief to property and theft over \$5,000 relating to the damage of St. John Ambulance and OPP vehicles (jointly with David George), which were temporarily abandoned in the former TOC site at the MNR parking lot on September 7. These charges were dropped. He testified that he was convicted in September 1996 on two counts of mischief relating to the chopping down of an Ipperwash Provincial Park sign along Highway 21.

#### ***20.6.7 Special Investigations Unit Proceedings***

The Special Investigations Unit (SIU) is an independent unit within the Ministry of the Solicitor General that has the mandate to conduct an investigation into “the circumstances of serious injuries and deaths that may have resulted from



criminal offences committed by police officers” (section 113(5), *Police Services Act*). It is established under Part VII of the *Police Services Act*. This unit is not part of any police services, including the OPP, and is not answerable to any Chief of Police or Police Commissioner. Its investigators are not police officers (though they may be former police officers), but rather are designated as peace officers. An SIU investigation does function like a police investigation, however, and the Director of the SIU can cause informations to be laid against police officers in relation to matters arising from the investigation, and refer the matter to the Crown Attorney for prosecution. The Director reports the results of the investigations to the Attorney General.

As discussed in the previous chapter, the SIU’s first involvement in Ipperwash was on September 7, 1995, as a result of the fatal shooting of Dudley George. The SIU’s investigation was parallel with the OPP’s Criminal Investigation Branch investigation into possible criminal charges against the Aboriginal occupiers, including attempted murder of police officers, assault of police officers, and public mischief arising between September 4 and 7, 1995. The fact that these investigations ran parallel, however, must not obscure the fact that they were independent and that separate subject matter was targeted by their respective investigations.

As discussed in the prior chapter, the SIU was notified in the early hours of September 7 about the fact that a police shooting had occurred, resulting in a fatality. SIU investigator Jim Kennedy arrived at the Forest Detachment at approximately 3:29 a.m., and interviewed Inspector John Carson in the interview room. The Criminal Investigation Branch’s chief investigator, Detective Inspector Bob Goodall, also arrived, albeit a few minutes later, and participated in the interview of John Carson. The interview concluded at approximately 4:29 a.m. The SIU interviewed several other officers and several of the occupiers who were present in the sandy parking lot area during the shooting. It compiled a number of interview statements, many of which were the subject of examination during the Inquiry.

On July 23, 1996, the SIU announced that Acting Sergeant Kenneth Deane would be criminally charged in relation to the shooting of Dudley George. As stated in an earlier section, Ken Deane was ultimately charged and convicted of criminal negligence causing death.

Later on in 1995, the SIU commenced a separate investigation into the alleged beating of Cecil Bernard George. The SIU was hampered by the inability of Cecil Bernard George to identify the police officers who struck him, and by the lack of apparent knowledge by the members of the CMU and arrest team as to who, amongst them, had struck Cecil Bernard George, or how he otherwise received the multiple number of blunt trauma wounds and injuries documented by the

medical personnel at Strathroy General Hospital. There was also a question about the extent of Cecil Bernard George's injuries. From these factors, the SIU concluded in its initial report of June 11, 1996, that no assault charges against any officers could be brought.

Commissioner O'Grady testified that he was initially advised by the SIU that their investigation had been completed and that, although there was an apparent excessive use of force by police officers, the inability to identify the officers who administered the blows stymied the efforts of the investigation. Commissioner O'Grady was not happy with this result in light of the SIU's initial conclusion that an excessive use of force had likely occurred, and expressed his concern to the SIU on May 29, 1997. He was not prepared to let this matter rest, and was considering alternative avenues to pursue the investigation. However, when the SIU ultimately renewed their investigation on or about June 17, 1997, Commissioner O'Grady deferred to the SIU's continued investigation.

When the SIU reopened its investigation, it sought production of photographs of the individual CMU police officers involved in the deployment into the sandy parking lot to try to assist in the identification of "subject" officers (a term designated to refer to officers who are the subject of an investigation). The OPP was prepared to co-operate and turn over the photographs to the SIU. However, the OPPA, the body representing the interests of non-commissioned OPP officers, resisted this request, and filed court proceedings to challenge it. The matter was never resolved as the SIU withdrew its request before it reached the courts.

In its final report, dated February 8, 1999, the SIU recommended that no further action be taken in relation to this matter. Director Tinsley concluded that an excessive use of force was not demonstrated, given its description of the context of the confrontation as a "violent battle raging between members of the CMU and various protestors." The Director's Report stated, in part:

I am of the view that the evidence discloses no reasonable grounds upon which to find that the force used by CMU officers against Cecil Bernard George was so disproportional in relation to the threat as to render it excessive, and therefore criminal, in the circumstances.

It is difficult to reconcile this conclusion with the testimony before the Inquiry. As noted by Superintendent Tony Parkin during the Inquiry, it is indeed "unfortunate" that to this day we do not know who caused any of the blunt head injuries to Cecil Bernard George.

The use of force exercised on Cecil Bernard George required the administering officer(s) to file a use of force report, which is a mandatory statutory requirement under Regulation 926 to the *Police Services Act*, regardless of whether the



force use was or might have been “excessive.” The Regulation provides, in the material part,

14.5(1) A member of a police force *shall* submit a report to the chief of police or Commissioner whenever the member ...

c) uses physical force on another person that results in an injury requiring medical attention.

(2) The report shall be in Form 1. (emphasis added)

This Regulation was in force in 1995, and continues to be in force today.

No such report was ever filed by any officer, even though Cecil Bernard George’s injuries, to the knowledge of the OPP, required medical treatment, thereby falling under this mandatory reporting requirement. The failure of the individual police officers involved to file a use of force report thwarted the purpose of such requirements, namely, to promote transparency in police conduct and ensure accountability in their actions. If police officers refuse or neglect to fulfill such statutory requirements, then a spectre of suspicion is created surrounding the allegations of excessive use of force, whether that suspicion is justified or not. Such a spectre has been created surrounding the allegations of excessive use of force in relation to the blunt trauma injuries sustained particularly to Cecil Bernard George’s face and head, inviting an adverse inference to be drawn against those officers involved in the physical detention of Cecil Bernard George in the sandy parking lot on the evening of September 6, 1995. Indeed, some of the officers who testified admitted seeing Cecil Bernard George struck by one or more police officers though none of the five officers who testified could identify any of the police officers administering the force.

This sad state of affairs was not lost on Commissioner Boniface when she testified about her views of the SIU investigation into the beating of Cecil Bernard George. She noted the discontinuity between the statements of the engaged police officers regarding the level of force administered by them and the actual documented injuries, and that none of the police officers could identify anyone who applied any force whatsoever. She concurred with the conclusion of the SIU that there was no point in having a third investigation because of the identity problem.

I acknowledge that it is quite possible that some of the officers who administered some of the twenty-eight or so blunt force blows to Cecil Bernard George may not be able to confirm who it was they hit that night. We heard evidence from both Aboriginal witnesses and police witnesses that there were degrees of hand-to-hand combat, so to speak, between the officers and occupiers during

the confrontation, with both sides doing their share of striking the other. However, Cecil Bernard George was the only occupier who was subdued and arrested during the course of the confrontation in the sandy parking lot. Hence, logically, any officer who realized he had struck the occupier who was subdued and ultimately arrested by the arrest team would have come to know the identity of that occupier as Cecil Bernard George, and further that Cecil Bernard George had been hospitalized for his injuries.

Indeed, Dr. Marr testified that when she examined Cecil Bernard George initially upon his admission to the hospital and further on September 8, there was evidence of injuries consistent with some form of blunt force trauma, several of which were consistent with police batons. As well, she documented several injuries consistent with some form of blunt force trauma to the head, face, and neck regions of Cecil Bernard George. While I have described the extent of his injuries elsewhere, it is important for the current discussion that Dr. Marr observed six separate injuries to his face in and around his mid-forehead, cheekbone, eyebrow, nose, and lip, the latter of which required suturing; two injuries to the back of his neck; and two injuries to the back of his head, one of which was a two-inch laceration requiring metal sutures. She further testified that the injuries that caused her the most concern the night he was admitted into the emergency department were the injuries on the back of his head because they were the likely cause of his impaired consciousness.

There was insufficient evidence to conclude who administered blows to Cecil Bernard George, with the exception of Chris Cossitt who admitted that he made contact with Cecil Bernard George, and likely Wade Lacroix, who testified that he struck the person who struck and broke his shield in the sandy parking lot during the course of the second punchout, leading to the strong inference that he struck Cecil Bernard George, albeit in response to Mr. George striking and breaking his shield with a steel pipe. I acknowledge the context of the violent confrontation in which there were blows occurring both ways, and I further acknowledge Cecil Bernard George's testimony before the Inquiry that he, at least initially, actively resisted arrest and swung his legs and a steel pole at police officers. Arresting Cecil Bernard George no doubt warranted a certain number of defensive blows on the part of police officers attempting to discharge their duty. However, at some point in time along the continuum of events, the number of blows became excessive and, in terms of those blows to Cecil Bernard George's face and head, were in my view unjustified.

It is also worth noting that Cecil Bernard George's testimony before the Inquiry differed somewhat from the testimony he gave in *R. v. N.C.* At the Inquiry, Cecil Bernard George admitted he had a steel pipe in his hand, which he used as



an offensive weapon against police officers, whereas at *R. v. N.C.* he testified he had a stick and that he only used it in a defensive way to defend himself as he was being attacked.

The evidence particularly of the police officers who testified, including Sergeant Hebblethwaite, leads me to conclude that striking a suspect on the face and/or head with a baton is never an acceptable level of force on the part of the police. The head and face injuries sustained by Cecil Bernard George required medical treatment. It is difficult to believe that none of the officers involved in the subduing or arrest of Cecil Bernard George realized they were the one(s) who administered blows requiring hospital treatment nor could they identify any other fellow police officer from their own unit who administered any blows warranting the filing of a use of force report. The fact that none of the police officers admitted striking Cecil Bernard George to the SIU nor would or could identify any other police officer who struck Cecil Bernard George warrants concern in the circumstances. While the Commission did not hear from all members of the arrest team and CMU active in the sandy parking lot, no officer (aside from Constable Cossitt, who testified that he thought his shield made contact with Cecil Bernard George) admitted to having either struck Cecil Bernard George or knowing the identity of any police officers striking Cecil Bernard George. I note that no apology or acknowledgment has been made by the OPP with respect to, at minimum, the multiple head and facial injuries Cecil Bernard George suffered, even after he was acquitted of the criminal charges that were the foundation of his arrest.

I recommend that the OPP issue a public apology to Cecil Bernard George for the excessive force he suffered in the form of blows to his head and face at the hands of one or more unidentified police officers during the course of his detainment and arrest in the sandy parking lot during the evening of September 6, 1995, and which required medical treatment, to be delivered in person by the current Commissioner, or his delegate, and via a press release and conference. I further recommend that improved measures be taken to ensure compliance with the mandatory use of force reporting requirement by requiring witness police officers to file a similar report whenever they witness the use of force requiring medical treatment by police officers on civilians, with corresponding disciplinary repercussions for failure to report. This recommendation should be implemented by an amendment to the Regulations to the *Police Services Act*. Finally, I recommend that the OPP develop further measures to facilitate the identification of police officers to civilians so as to minimize the prospect that SIU and other investigations will be thwarted due to the inability of the alleged

victim to identify his or her alleged assailant police officer. In making this recommendation, I acknowledge Commissioner Boniface's evidence that there are now badge numbers on helmets, and names on uniforms.

### ***20.6.8 The Coroner's Investigation***

The statutory mandate of the Office of the Chief Coroner is set out in the *Coroners Act* R.S.O. 1990, c. 37, as amended. The circumstances that caused the death of Dudley George would normally warrant an investigation and then an inquest. While an investigation was carried out, an inquest was not held. According to the submissions of the Office of the Chief Coroner (who had party status at both Part 1 and 2 of the Inquiry), the Chief Coroner determined that it would be more expedient and in the public interest to participate in the Inquiry rather than hold an inquest, which, he submitted, would have been narrower in scope than the Inquiry while being duplicative with respect to its overlapping mandate.

The Office of the Chief Coroner submitted that it would be appropriate, and in the public interest, for me, as the Commissioner, to answer the following questions (prescribed by the *Coroner's Act*, section 31(1)(a) to (e)) in the following manner on the basis that my investigation dealt with these issues to fulfill the Coroner's mandate in the process of discharging my own:

- a. identity of the deceased: Anthony O'Brien (Dudley) George
- b. when the death occurred: Death was pronounced at 12:20 a.m. on September 7, 1995, at the Strathroy Middlesex General Hospital. However, he appears to have become vital signs absent at least twenty to thirty minutes prior to his arrival at the hospital at approximately 12:00 a.m.
- c. where the death occurred: Strathroy Middlesex General Hospital.
- d. how the death occurred, that is, the cause of death: Gunshot wound of the upper chest.
- e. by what means the death occurred, that is the manner of death: Homicide.

For clarification, the question concerning "by what means" Dudley George died does not import any finding of liability within the meaning of the *Coroner's Act*. Further, "Homicide" for death classification purposes under the *Coroner's Act* is defined as the act of "a person killing another person." I adopt that statutory meaning of these terms for purposes of my findings below.

I am prepared to make the findings submitted on behalf of the Office of the Chief Coroner with two exceptions. First, I cannot approximate the time when



Dudley George became “vital signs absent.” In my view it would be unwise to speculate as to the precise time at which Dudley George died, given the lack of precision in the evidence. It also is not necessary for purposes of discharging my mandate. It is clear on the evidence that Dudley George was “vital signs absent” by the time he reached the hospital, and very likely before he reached the hospital. Second, while Dudley George was pronounced dead at Strathroy Middlesex General Hospital, it is likely he died either en route from the park to the hospital, or at the hospital site.

Furthermore, I am satisfied on the preponderance of evidence that, despite the heroic efforts of Pierre George, Carolyn George, and James Thomas Cousins to transport Dudley George to hospital as quickly as possible, due to the nature of the wound inflicted on Dudley George, there was very little chance of his survival, irrespective of the speed at which he might have received the appropriate medical treatment, even under ideal circumstances. This finding, however, does not obviate the need for improvement in the role of emergency medical services in future police operations involving the deployment of specialized police units into high-risk situations, as noted in Chapter 9 in Part II of my report.

#### ***20.6.9 Civil Litigation***

The Estate of Dudley George brought a civil proceeding claiming damages as compensation for his wrongful death. This lawsuit was ultimately settled on the eve of the 2003 provincial election, when Sam George accepted the government’s offer to settle the lawsuit, resulting in the lawsuit being dismissed in exchange for consideration. In so doing, he relied on the election promise of Liberal leader Dalton McGuinty that, if elected, he would call a Public Inquiry into the events surrounding the circumstances of Dudley George’s death. When the Liberal party was elected to form the government, the new Premier passed the Order-in-Council constituting this Public Inquiry.

### **20.7 The Impacts of the Events of September 6, 1995**

In a violent confrontation, there can be emotional and psychological injuries sustained apart from the immediately visible physical injuries suffered from physical contact. Those injuries are invisible and are often latent in surfacing, but can have a much more devastating and long-term impact on a person’s ability to function than physical injuries. Also, such impacts can be experienced not only by those who are directly involved in the violent activity, but by those who are bystanders and observers of the violent activity. They can also be experienced by the relatives of those who are victims of violence. Finally, there can be

impacts on communities and relationships within and amongst the affected communities. The Inquiry heard a sampling of the emotional, psychological, and community impacts experienced by the direct participants and bystanders alike. The Aboriginal people, police officers, and local cottagers experienced the impacts. They continue to be experienced by some of these people today.

Carolyn George suffered both physical and emotional injuries, notwithstanding that she was not in the park, much less the sandy parking lot, during the confrontation.

In addition to attesting to the visible bruising she suffered as a result of the arrest and detention in the parking lot of the Strathroy Hospital, Carolyn George testified extensively about the emotional impact of her brother's death on her and her family, and of her own experiences of September 6, 1995. She testified that she has an ongoing fear of the police who, she was convinced, followed her whenever she ventured out of the army camp to go to work or on other everyday endeavours. She would be stopped from time to time by police officers who said they did not know who she was, but were just doing a routine stop. She made complaints to the police and to those within the army camp. She stated: "It got to the point [in April of 1996] where I just couldn't make myself go to work anymore." Carolyn George never returned to her job after that. For a while she confined herself to the army camp, and would only go out if accompanied by someone else. She refused to drive her own car due to her fear that she would be stopped by the police.

Even today Carolyn George spends most of her time within the physical boundaries of the army camp. She still does not trust the police, and cannot say whether that trust will ever return. She summarized her fears: "I'm afraid that they [the police] would shoot me anytime too." Regardless of whether this fear is rational, it is real for Carolyn George and will continue to hamper her ability to resume any type of a normal life until it is dealt with.

In speaking about the loss of her brother, she testified that Dudley George had been a mainstay to her family. He had been a source of emotional support to her and her children, and had been there for them when she divorced and when her and Dudley's father died.

Carolyn George praised the Mennonite community who reached out to the people of the army camp in the aftermath of the events of September 6, offering donations and assistance. Their presence in the community made her feel safer. She especially appreciated the support of a young Mennonite student, John, who came to live with her for a while, making her feel safer yet.

Sam George testified eloquently about his brother Dudley George and the impact of the loss of Dudley on himself and his family. He testified that "losing



someone, your brother or your sister, that always has a big impact [on] one's life. It always ... breaks your heart when that happens." He testified that losing Dudley George had a big impact on him and his brothers and sisters.

He also testified that he observed that his brother's death had an adverse impact on the children and some of the other families of the community. That there was a lot of fear of the unknown — not knowing what was going to happen next and not knowing whether the police might come into other communities and start to look for people. From his perspective, the whole local Aboriginal community felt like it was under siege for a period of time due to this fear of possible further police action.

He stated before the Inquiry:

Dudley will always be part of my family. He'll always be in my heart and in my mind. He will never leave there. I hope that in the future my brother will be remembered for what he stood up for and why he stood up for it. He stood up for the rights of our people. He paid the price for standing up for [those] rights. And this is why I say in my objectives, I don't want my brother ever, ever forgotten for what he'd done. He paid that price and I don't think he deserves to be forgotten. He will always be remembered and that's the way I'd like to see it.

Some of the police officers who engaged in the confrontation testified that the events of the evening of September 6 continue to haunt them to this day. Constable James Root testified:

[The incident of September 6th] had a profound affect on me. I think there's ... there's probably not a week or a month that goes by that I don't in some way, shape or form reflect on it.

Wade Lacroix told the Inquiry that he suffers from Post-Traumatic Stress Disorder and took a medical leave of absence as a result of his experiences during the evening of September 6, 1995.

As well as having an emotional impact on individuals, the events of September 6 have also had a negative impact on Aboriginal–police community relations. For example, TRU senior officer James Irvine observed that after the Ipperwash incident,

... one of the effects has been the loss of trust, I think, from the First Nations communities ... There's certainly a reluctance to allow TRU teams to go onto some First Nation territories.

This loss of trust was mirrored from the Aboriginal perspective during the hearings as well. Wesley George, who was fifteen years old at the time of these events, simply stated:

[I] can't trust the cops no more. Well, maybe some of them, but you never know who was down there, like, it could be any cop ... That's just the most [important] impact right, there is just the trust — lost the trust — [in] someone that's supposed to protect you.

There were other young people who were exposed to trauma and violence that evening. Leland White (George), who was also fourteen years old at the time, and a passenger on the school bus young Nicholas Cottrelle drove into the sandy parking lot on a perhaps misguided “rescue” mission, was clearly upset by the events. He testified that when he found out that Dudley George had died, he started crying. On September 7 he discovered that his pet dog, which he had hidden underneath him on the floor of the bus when the shooting erupted, had suffered what he assumed was a gunshot wound through his leg. He believes he continues to suffer from anxiety as a result of these events. He also testified that in the aftermath of this incident, he left school because he no longer felt safe:

[I felt] like somebody was after me, like the cops or something. I felt unsafe, and like, people were racist towards me ...

These are not matters that one forgets easily. They make lifelong impressions.

Another youth, James Thomas Cousins (who refers to himself as “J.T.”), who rode in the back seat of the car that transported Dudley George to the hospital, and who applied pressure with his hand to Dudley George's chest wound in a desperate attempt to keep him alive, is another victim of these traumatic events. He continues to have nightmares about his arrival at the hospital with Dudley George. His nightmares have the recurring theme of people standing around and wanting to help but being unable to because they are behind a locked door. He testified that when he went back to his parents' home at the Kettle Point Reserve, he did not feel safe because he felt exposed by virtue of the large bay windows in his family home, so he snuck back to the army camp. He slept very little. He was sad and going through shock. He does not trust police officers any longer. He was afraid to leave the army camp because he feared that the police were going to kill them. It took him a long time to feel safe even within the army camp.

Nicholas Cottrelle was sixteen years old when he drove the bus into the sandy parking lot. He did not return to school in the fall of 1995, as he felt he was



morally obliged to stay at the army camp. He did not leave the army base at all until late November or early December 1995, in part because he feared he would be arrested by police and would never make it back. He lost his ability to trust the police.

When he did attempt to return to the local North Lambton Secondary School in Forest in 1997, he felt ostracized. He testified that he left because he “didn’t really feel welcome” at the school. He felt that he was the subject of derogatory comments at the school, so he left after two to three weeks and never returned. He noted that he was never offered any counselling of any kind in relation to the events of September 6 by the school or elsewhere. He also noted that there was never any follow-up by the hospital in relation to any of his injuries or psychological well-being.

The impact of her encounter with the police, in which she was arrested but not charged, has left a permanent mark on Marcia Simon. She testified that she suffered physical consequences as a result of the arrest. She ultimately resigned from her teaching position in London due to the pain and to the unsupportive environment she experienced at her school. She also testified that she was not provided access to counselling at the school in which she taught, even though that was a service that was supposed to be available. She also described the emotional impact of these events on her:

You can see how difficult it is to talk about that night and it was a long time before I felt safe enough to even come back into the town of Forest. Memories of how I was used in that garage at the police station I don’t think will ever go away ... When I see police coming I really have a difficult time with that and I’m working on it. I just had a session last night with my counsellor to help me, this many years later, where I am undergoing counselling to try to cope and I’m getting better.

Gina George, mother of Nicholas Cottrelle and spouse of Roderick George, testified that the events of September 6 have had a lasting traumatic impact on her family. For example, her husband has sleeping problems, and cannot sleep without either a radio or television on.

It became apparent that while the officers who were engaged in the violent confrontation that occurred in the sandy parking lot had fairly immediate access to a psychologist and to peer support services, the Aboriginal people who were also involved in that traumatic event did not have any such access. This lack of available counselling services can only have prolonged and entrenched whatever psychological and emotional difficulties the Aboriginal people have had as a result of being exposed to a traumatic event. It is unfortunate that the school system

did not step in to fill this breach in the fall of 1995 when its Aboriginal students and teacher attempted to return to school. I recommend that crisis counselling services be made available and accessible to individuals who are involved in violent or traumatic events involving police action. The responsibility for provision of the crisis counselling should rest with the provincial government in relation to police conduct that occurs off reserve land, and with the federal government concerning police conduct that occurs on reserve land.

When I refer to the counselling services being both available and accessible, I wish to emphasize that they must be actively offered to the affected citizens in a way that is respectful of their culture, tradition, and special needs. It is not enough to say that, for example, the fact that the Medical Services Branch at Indian Affairs Canada has the discretion to provide funding for crisis counselling to Aboriginal persons in need is sufficient. It is not. There must be a proactive element to the provision of crisis counselling services that is not dependent on a request being made first. It must be offered to the individuals in apparent need. The type of services offered must also be responsive to the type of treatment required, and informed by the cultural and traditional practices and beliefs of the Aboriginal persons requiring the counselling and support. The OPP did not wait for an officer request before sending its psychologist and peer support person. They appeared and offered their services to the police officers. Similarly, appropriate services should be offered to all such victims of traumatic events.

I have noted, with interest, the provincial government's recent announcement to improve the response of the Criminal Injuries Compensation Board in Ontario to fund emergency counselling services for victims of crime, amongst other improvements. While this is laudable, this initiative will not necessarily respond to the circumstances that I am examining. The need for counselling in the context of traumatic incidents may not always involve "victims of crime," and the entitlement to counselling that I have recommended should not be dependent on a characterization of the intended recipient of counselling as a victim of crime. Further, the Criminal Injuries Compensation Board scheme is still dependent on an application being made by the claimant before any such assistance can be offered. In the types of tragic circumstances that presented themselves on the night of September 6, 1995, a call for help should not be a requisite for the help to arrive.

Again I refer the reader to Chapter 12 in Part II of my report for discussion regarding the need for improved emergency medical services and treatment to the participants and bystanders of violent situations that involve a police operation.

Another unfortunate, but foreseeable, consequence of the lack of apparent timely action and response from the federal government during this crisis, in the



time leading up to the occupation of Camp Ipperwash and then Ipperwash Park, is the buildup and expansion of resentment initially directed toward the federal government by the Aboriginal peoples (who had a long track record of protesting to the federal government to no avail regarding their claims regarding the army camp) to the police.

It remains to be seen what form this resentment may take when it comes to the involvement of police forces in situations that cry out for a political, rather than a law and order, solution. For example, the Incident Commander, John Carson, expressed frustration at the inaction of the federal government to the pleas of the occupiers for the return of the army camp land to the Aboriginal people. He placed blame for the tragedy of Dudley George's death on the shoulders of the federal government, and stated his belief that had the federal government dealt with the army camp two years earlier, the occupation likely would not have spilled from the military base into the park and the sandy parking lot.

Other police officers testifying before the Commission expressed similar sentiments.

## **20.8 Cultural Insensitivities and Racism: Barriers to a Timely Resolution**

One of the factors that contributed to the lack of a timely peaceful resolution to the occupation of Ipperwash Park was the element of cultural insensitivity and racism that existed within some of the ranks of the Ontario Provincial Police force. The negative stereotypes held by certain members of the policing operation and certain occupiers of each other, including a demonstrated tendency to think the worst of each other, clearly contributed to an inability to trust and a misinterpretation of the others' actions and intentions over the course of September 4 to 6, 1995. Trust is an essential element in establishing an open line of communication and ultimately negotiating these types of disputes. Without trust, any effort to engage two parties in dialogue and negotiation has little hope of succeeding.

My approach to this issue is to identify barriers that contributed to the circumstances surrounding the death of Dudley George (and, more particularly, to the whole set of circumstances that led to the deployment of the CMU and TRU to clear the sandy parking lot without the benefit of having established a line of communication between the police and the occupiers), and then to determine how such barriers might be removed to avoid similar situations of violence in the future. Evidence emerged from the hearings that required that the potential existence of, and role played by, racism and negative stereotypes of First Nations people in the formulation and execution of police tactics and strategies be

examined. I am focusing my analysis primarily on the police because it is they whom society charges with keeping the peace, vesting use of force in the police where necessary to carry out that professional mandate. Though I am focusing on the police, I am not unmindful of the evidence that suggested that certain of the occupiers also hurled inappropriate comments at the police during the course of September 5 and 6; for example, during the late afternoon or early evening of September 5, when there was an exchange of racist slurs and profanity between certain police officers and certain occupiers in which police called occupiers “wahoos” and “wagon burners” and, during the confrontation on September 6, occupiers invited police to “go back home on the Mayflower” or words to that effect.

Before reviewing the specific evidence that emerged at the hearing relevant to this issue, it is important that a few comments be made concerning my use of language and my framework. I have chosen to use the phrase “cultural insensitivity” to encapsulate decisions and conduct that were misinformed by reason of ignorance or a misunderstanding of Aboriginal culture, traditions, and integrity. Under that broad rubric is a continuum of actions and omissions that reflect the spectrum of negative or prejudicial judgments that may have adversely affected the handling of this operation by the OPP. It deals with conduct that, while unintentional, was offensive and insensitive to the people who would be reasonably affected by it, but not necessarily racist.

My aim is to provide what I hope will be constructive insights into conduct and behaviour that I have identified were barriers to resolving the occupation of Ipperwash Provincial Park in a peaceful and timely manner, with a view to ensuring that such barriers do not exist in future police operations involving Aboriginal issues and persons.

One more word of explanation is required. Certain parties at the Inquiry made a point to distinguish in the evidence between conduct that was, in their view, intentional and that which was, in their view, unintentional. It is clear from the *Ontario Human Rights Code*, and case law decided under the *Code*, that intention is not determinative of whether the impugned conduct is racist. Rather, if a pattern of conduct or behaviour has an unjustified adverse impact on a person, or group of persons, by reason of race or any of the other prohibited grounds, then the conduct or behaviour in question is racist regardless of the intentions of the persons responsible for that conduct. The lack of intention does not make otherwise racist conduct any less so.

The Ontario Human Rights Commission’s definition of racism, found in its Policy and Guidelines on Racism and Racial Discrimination, provides further insights into the scope of conduct captured under the rubric of racism:



Definitions of racism all agree that it is an ideology that either explicitly or implicitly asserts that one racialized group is inherently superior to others. Racist ideology can be openly manifested in racial slurs, jokes or hate crimes. However, it can be more deeply rooted in attitudes, values and stereotypical beliefs. In some cases these beliefs are unconsciously maintained by individuals and have become deeply embedded in systems and institutions that have evolved over time.

Racism differs from simple prejudice in that it has also been tied to the aspect of power, i.e. the social, political, economic and institutional power that is held by the dominant group in society. In Canada and Ontario, the institutions that have the greatest degree of influence and power, including governments, the education system, banking and commerce, and the justice system are not at this time, fully representative of racialized persons, particularly in their leadership.

Racism often manifests in negative beliefs, assumptions and actions. However, it is not just perpetuated by individuals. It may be evident in organizational or institutional structures and programs as well as in individual thought or behaviour patterns. Racism oppresses and subordinates people because of racialized characteristics. It has profound impact on social, economic, political and cultural life.<sup>6</sup>

As stated by the Ontario Human Rights Commission, even where conduct has the unintended consequences of perpetuating negative stereotypes about a distinct group of people by race and/or culture, it is objectionable and will constitute racism. The difference attributed to intention, or lack thereof, to discriminate goes only to what action or penalty might be appropriate to redress such behaviour. Typically, unintentional discrimination (also known as adverse impact discrimination) will attract a lesser form of sanction or redress than intentional discrimination. A finding of unintended discriminatory conduct also tends to attract less of a stigma than does a finding of intentional discrimination. Importantly, intention or lack thereof does not affect the characterization of the conduct as racist if it otherwise fits the criteria set out by the *Ontario Human Rights Code*.

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6 Ontario Human Rights Commission, “Policy and Guidelines on Racism and Racial Discrimination,” Part 1, #2.2 at <http://www.ohrc.on.ca/en/resources/Policies/RacismPolicy>.

Many witnesses in the Inquiry declined to use the terms “racism” or “racist” to describe the memorabilia procured and purchased by certain members of the TRU and ERT teams who were involved in the events leading to the death of Dudley George, preferring instead the phrase “cultural insensitivity.” The witnesses seemed to be suggesting, through the use of this term, a lack of intent to discriminate or be racist. While these terms are not identical in meaning, for the reasons stated above, my view is that both can reflect attitudes that can have equally negative and destructive impacts when present during the course of a high-risk police operation like the one under examination. Neither cultural insensitivity nor racism has any place in a police force in a civilized society such as Canada.

Commissioner Boniface agreed that racism within a police force is a very serious problem.

### ***20.8.1 Whitehead and Dyke Commentary***

After this Inquiry was called, but before the hearings began, a segment of tape was released to the media via a *Freedom of Information and Protection of Privacy Act* request. It recorded a conversation between two police officers who were working undercover at Ipperwash on September 5, 1995. It came to light when Detective Sergeant Trevor Richardson and Detective Constable Mark Dew were reviewing a series of tapes in response to the *Freedom of Information and Protection of Privacy Act* request in 2003. Upon hearing this conversation between Detective Constable Darryl Whitehead and Detective Constable Jim Dyke, they immediately reported the contents of the tape to their superior officer because “it was offensive ... to the First Nations people and something that shouldn’t have been said.”

This prompted then Commissioner Boniface to launch a complaint, of which she was the complainant. Detective Constable Darryl Whitehead was described as co-operative and identified the other person on the tape as Constable Jim Dyke. On the other hand, Detective Constable Dyke, who, by the time the Complaint was initiated, was retired and beyond the reach of discipline, would not acknowledge his voice on the tape. The tape, the Complaint, and the investigation and report were filed as exhibits.

During the course of playing the tape recording taken by Officers Whitehead and Dyke on September 5, 1995, at approximately 1:43 p.m., John Carson identified Speaker #1 as Jim Dyke, and Speaker #2 as Darryl Whitehead.

One of the more egregious excerpts of that conversation bears repeating:

SPEAKER 1: No, there’s no one down there. Just a big, fat fuck Indian.



SPEAKER 2: The camera's rolling.

SPEAKER 1: Yeah. We had this plan, you know. We thought if we could ... five or six cases of Labatt's 50, we could bait them.

SPEAKER 2: Yeah.

SPEAKER 1: And we'd have this big net at a pit.

Speaker 2: Creative thinking.

SPEAKER 1: Works in the south with watermelon.

There is no doubt that the comments made by Speaker #1 (Jim Dyke) were racist, regardless of what definition one adopts. They were racist against the Aboriginal people who were under surveillance, and they were racist against persons of colour. Not one witness in the hearing tried to defend or rationalize these comments. The then Incident Commander John Carson described the comments as “inappropriate,” “unacceptable,” and “not to be tolerated.”

As a result of the discipline investigation, Detective Constable Whitehead accepted a penalty within the context of informal discipline. Twenty-four hours were deducted from his accumulated credits, and he attended a four-day First Nations Awareness program that was also on time deducted from his credits. This translated into about \$2,800 worth of lost wages. The nature of his discreditable conduct was his failure to properly respond to Constable Dyke's comments. Though Detective Constable Dyke was retired by the time of this internal investigation, he was engaged by the OPP on contract. His contract was terminated and not renewed by the OPP as a result of this incident.

What was particularly disturbing, aside from the comments themselves, was the functions that had been assigned to these officers. Jim Dyke and Darryl Whitehead were part of the Project Maple intelligence team under Detective Sergeant Trevor Richardson. Jim Dyke was working in an intelligence function of Project Maple between September 4 and 6, 1995. His background was as a criminal investigator. Darryl Whitehead was working for Detective Sergeant Don Bell's intelligence unit at the London Joint Forces Operation and was an intelligence officer by training. These are individual police officers whose fields of expertise demand that they bring impartiality to their roles and to the often sensitive and crucial information they are processing and filtering for the Incident Command structure.

Don Bell candidly admitted that he was extremely surprised that these officers made these derogatory comments, and that he knew Darryl Whitehead quite well. He also agreed that “it's imperative when doing proper analysis” that

those involved in intelligence approach their job without bias, and that one of the most serious forms of bias is racism. He further agreed that the existence of racism in any intelligence officer would undermine that officer's intelligence functions.

As I have stated, the comments made by retired Detective Constable Jim Dyke are racist. Detective Constable (now Detective Sergeant) Darryl Whitehead is equally responsible for these comments insofar as he made no attempt to admonish Jim Dyke or otherwise express his disapproval during the course of the taped conversation, thereby indicating his agreement or, at minimum, his acquiescence to the racist sentiments expressed. As well, he failed to report this misconduct to his superiors. I question the suitability of dealing with this incident by way of informal discipline with respect to the allegations against Darryl Whitehead. It seems to me that whenever there are credible allegations of racism (including a failure to respond), they ought to be dealt with by way of formal discipline, with all the protections and safeguards accorded by the discipline process. The difference between sending a matter to formal discipline or informal discipline is whether the public will have a right to know about the allegations and the outcome of the disciplinary proceedings. Formal discipline includes the array of sanctions available under informal discipline, including a reprimand. This is the only way that transparency and accountability into this serious issue can be accomplished. See Chapter 11, "Bias Free Policing," in Part II of this report for my analysis and recommendations regarding use of discipline proceedings in relation to allegations of racism within the police force.

### ***20.8.2 Other Offensive and Racist Verbal Communications***

During the course of the Inquiry, other offensive communications were revealed in the form of tape-recorded conversations and transmissions involving members of the OPP Ipperwash policing operation during September 5 to 6, 1995. A summary of the audio clips that reflected offensive and, at times, racist communications, was filed as an exhibit. Some of the audio recordings were played at the Inquiry.

Commissioner Boniface readily acknowledged the offensive nature of certain communications that the OPP discovered in the course of preparing for the Inquiry. Their discovery resulted in a further internal Professional Standards investigation into the questionable conduct of the implicated officers who participated in the Ipperwash policing operation. The result was the imposition of informal discipline on four officers who were still active on the force, and who uttered comments that the Professional Standards Bureau determined



amounted to discreditable conduct. Four civilian members received letters of reprimand, four officers were subject to non-disciplinary discussions, and one officer received informal discipline of eight hours.

Some examples of these communications captured on tape and filed as part of an exhibit at the Inquiry are reproduced here.

Sergeant Stan Korosec to Constable Wayde Jacklin on September 5, 1995, at 11:32 p.m.:

We want to amass a fucking army ... [a] real fucking army and do this — do these fuckers big time.

Robert Huntley and Sergeant Brigger on September 5, 1995, at 11:06 a.m. in the context of a discussion about overtime:

SGT. BRIGGER: “What are you going to do with all your money?”

SGT. HUNTLEY: “Well, give it to the government.”

SGT. BRIGGER: “Yeah, of course.”

SGT. HUNTLEY: “So that they can give the Indians more stuff. Like you know, all this stuff we keep giving them doesn’t come cheap. Somebody’s got to pay for it.”

Sergeant Huntley agreed that the comments were, in retrospect, inappropriate and did not dispute the assertion that some First Nations people would find those comments offensive. He also agreed that some of his comments indicated a lack of understanding regarding First Nations peoples. I agree and would go further in characterizing these comments as projecting a negative stereotype of Aboriginal people.

The Commission also heard evidence from some of the occupiers as to comments allegedly directed toward them by OPP officers over the course of September 5 and 6, at or near the park. Kevin Simon testified that on September 5, some OPP officers called the occupiers behind the park fence names such as “wagon burners” and “wahoos.” The occupiers understandably considered these names as degrading to their ancestry. Several occupiers recalled an incident in the late afternoon or early evening of September 5, 1995. Several members of ERT were present in the sandy parking lot while a number of occupiers were inside the park behind the fence. A verbal altercation took place, no doubt with taunts being issued back and forth between police officers and occupiers. However, several occupiers recalled that one OPP officer made the comment

“Welcome to Canada,” amongst other comments and gestures, which they took as an invitation to fight.

It is not beyond reason to accept that these types of comments were made directly to the occupiers given the derogatory comments made by police officers that were captured on tape. In light of these types of comments and the belief on the part of at least some of the occupiers that the police officers did not respect Aboriginal people, it is not surprising that the OPP was unsuccessful at opening up a line of communication with them during the course of September 4 to 6, 1995.

Ovide Mercredi agreed that racial taunts by police officers on duty are counterproductive to the goal of non-violent resolution via dialogue. He went on to observe:

So the primary responsibility of a police officer is peace and harmony. And conflict resolution is about peace and harmony. So ... you know how to come there, if you really understand your responsibility as a police officer, you're not going to come there with racial taunts ... You're going to come there with a higher principle ... the public interest.

I agree with Ovide Mercredi's observation. There is no place for racial taunts or slurs of any type by police officers, whether or not these comments are made in public or in private. Not only are such comments “counterproductive” to the efforts of police officers in their roles as peacekeepers, they are improper, contrary to professional standards, and can lead to violence.

### ***20.8.3 Motion by the OPPA, OPP, and Province of Ontario to Preclude Admission into Evidence of OPP Disciplinary Records Related to the Ipperwash Investigation***

The OPP and the Ontario Provincial Police Association (OPPA) brought a motion requesting that I set aside the summons I issued to Commissioner Boniface on June 15, 2005. The summons required Commissioner Boniface to attend before the hearing and produce the following documents in the possession of the OPP:

1. The discipline files maintained by the OPP in respect of the “dis-credible conduct” of Detective Constable James Dyke and Detective Constable Darryl Whitehead;
2. The discipline files maintained by the OPP in respect of the mugs and T-shirt distributions; and



3. The orders, policies, guidelines and/or procedures maintained by the OPP in respect of the usage of “informal discipline” including those that would have governed in respect of the informal discipline used under paragraphs 1 and 2.

The OPP objected to the production of the documents identified in paragraphs 1 and 2 of my summons. It argued that section 69(9) and 80 of the *Police Services Act*, R.S.O. 1990, c.P.15 (the PSA) precluded production of these documents into evidence at the hearing, or alternatively created a privilege by statute or at common law. The OPP was joined by the OPPA who argued, in addition, that section 69(10) of the PSA was a statutory barrier to production of these documents at the Inquiry in that the Inquiry constituted a civil proceeding.<sup>7</sup> The Province of Ontario supported the objectives of the OPP and OPPA, but argued that these documents were not relevant to the discharge of my mandate and, in the alternative, were privileged.

Aboriginal Legal Services of Toronto and the Chiefs of Ontario formally opposed the motion.

On August 15, 2005, I released the first part of my ruling, and found that the PSA did not create any statutory prohibition or any statutory privilege. I accordingly ordered, amongst other things, that these documents be produced to Commission Counsel under certain terms to be reviewed for relevance and the claim for common law privilege, which issue I had reserved on pending Commission Counsel’s review.

The OPPA then requested that I state a case to the Divisional Court of the Superior Court of Justice, in accordance with section 6 of the *Public Inquiries Act*, to effectively appeal my ruling ordering the release of the subject documents to Commission Counsel, and my ruling that the PSA did not create any statutory barrier (privilege or otherwise) to the production of these documents to Commission Counsel or to their admission into evidence at the hearing.

Before that case was stated, Commission Counsel reached an agreement with the OPP, OPPA, and the Province of Ontario that averted the need to go to court. The resolution allowed all relevant discipline-related documents to be produced and tendered into the Inquiry as evidence.

Commission Counsel was able to propose a resolution that permitted all of the discipline documents to be admitted into evidence at the hearing, subject only to the removal of the names and identifying features of those implicated

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<sup>7</sup> See my ruling issued August 15, 2005, for a fuller explanation of the grounds upon which the OPP and OPPA and Province of Ontario argued prevented production of these documents at the Inquiry, at Appendix 2 to this volume.

police officers who had no involvement in the Ipperwash police operation between September 4 and 6, 1995, and MNR personnel (also not engaged in the policing operation). The identities of police officers not present between September 4 and 6, 1995, would not assist my inquiry into and reporting on the events surrounding the death of Dudley George and therefore were not relevant to the discharge of my mandate.<sup>8</sup>

The names of all the officers who had any active engagement in the police operation at Ipperwash between September 4 and 6, 1995, were revealed. In addition, the substance of all of the allegations and investigation interviews and documents, together with the conclusions reached and actions taken, were revealed to the public through the Inquiry. As well, the names of other officers who consented, such as investigating officer Staff Sergeant Dennis Adkins and Commissioner Boniface, were also released to the Inquiry and the public.

In my view, this was an example of the co-operation that Commission Counsel fostered with counsel for the parties at the Inquiry. The result of these and other similar efforts throughout the Inquiry was that no contested matter was referred to the Ontario Superior Court of Justice for resolution. This streamlined and expedited our Inquiry, as court interventions on contested matters are costly and can delay Inquiries for months.

#### *20.8.4 Commemorative Mugs and T-Shirts*

In the aftermath of successful joint force or large-scale policing operations, a practice had developed amongst participating OPP officers to procure T-shirts and related paraphernalia as a memento or souvenir of their joint involvement. This practice was repeated after the events of the evening of September 6, 1995. Apparently no police officer, including Incident Commander John Carson, gave any thought to the potential upset that the discovery of such souvenirs might have, particularly on the Aboriginal citizens and their families who had been affected by those events. I might add that Aboriginal people are not alone in their dismay at the lack of thought and sensitivity that these offensive items reflected. Any fair-minded person seeing these items, or hearing the comments described in the prior section, is bound to be offended by such conduct, and racism against any group of people is of equal concern to us all.

Furthermore, there was apparently no requirement within the OPP that the approval of any senior officer be sought with respect to either the propriety of such

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8 See the submissions of Commission Counsel on February 6, 2006, in the transcripts at pages 8–19 for a fuller explanation of the agreement and the circumstances surrounding it.



a practice in relation to any particular police operation, or even the use of any emblem associated with the OPP in such endeavours.

The existence of certain mugs, T-shirts, and other paraphernalia came to the attention of the OPP when Staff Sergeant Charlie Bouwman notified Superintendent Tony Parkin that an Aboriginal MNR employee at Pinery Park, Stan Cloud, had made a verbal complaint to him. Mr. Cloud is an Aboriginal person from Kettle and Stony Point First Nation. He reportedly told Bouwman that while working at Pinery Park (where the OPP officers were housed during the occupation) he had seen certain items that were, in his view, derogatory and offensive to First Nations people. Mr. Cloud told his boss, Ipperwash and Pinery Park Superintendent Les Kobayashi, that these items poisoned the workplace for him and were out in the open for all to see.

Mr. Kobayashi was disturbed by what he heard, and referred the matter to the OPP. He also assigned Assistant Superintendent Don Matheson to investigate the potential involvement of MNR employees and to take appropriate action.

Superintendent Parkin directed Staff Sergeant Bouwman to obtain a formal written complaint from Mr. Cloud in order to initiate a disciplinary investigation under the *Police Services Act*. However, when Mr. Cloud was reluctant to make a formal complaint, Superintendent Parkin, recognizing the sensitivity around this situation, instigated an internal investigation in which he was the Complainant. Staff Sergeant Dennis Adkin was assigned to investigate the Complaint.

The Complaint was filed as part of an exhibit, and dated October 17, 1995 (the “Parkin Complaint”). The matters that were the subject of the Parkin Complaint were as follows:

1. Two versions of coffee mugs were under investigation. One version exhibited an OPP shoulder flash with an arrow going through it, and on the other side an OPP shoulder flash with the words “Team Ipperwash ’95” written below it. The other version was the same except the OPP shoulder flash did not have an arrow piercing it.
2. Inflammatory remarks from OPP officers made to park personnel about First Nations persons in general.
3. An OPP cruiser sitting in the parking lot at Pinery Park with a bull’s eye target and an arrow on a suction cup stuck to the door.
4. Chalk drawing of arrows and bombs on a blackboard in a Pinery Park building.

5. Derogatory cartoons posted on a bulletin board in a Pinery Park building.
6. T-shirts that had a feather lying on its side underneath an OPP crest.
7. A Labatt's Blue beer can that had yellow OPP tape wrapped around it, two feathers sticking out the back in sand, and a hole in the front of the can.
8. A Pinery/Ipperwash Park policy that stipulated procedures to be followed specifically aimed at First Nations people perceived to be committing offences in either of those parks issued in August 1995.

In the course of conducting his investigation, Staff Sergeant Adkin interviewed several police officers, Aboriginal persons, MNR park employees, and the designers and manufacturers of the coffee mugs and T-shirts. Staff Sergeant Adkin made the following findings:

1. The police officers assigned to the cruiser that had the bull's eye and arrow on its door undertook this action to relieve stress, which fellow police officers on duty at Ipperwash were feeling in the aftermath of the events of September 6, and that their intentions were harmless in that they intended no disrespect to the First Nations peoples of the area. Furthermore, they were not involved in the Ipperwash policing operation between September 4 and 6, 1995. Notwithstanding the lack of bad intentions, their actions clearly offended Mr. Cloud and, ironically, could have jeopardized officer safety in that such symbolism could have provoked retaliation on the part of First Nations persons. Hence, the actions of these police officers were inappropriate.<sup>9</sup>
2. The identity of the persons who allegedly drew the bombs and arrows on the chalkboard was unknown, and hence no conclusion was reached.
3. A part-time contract MNR employee of Pinery Park was responsible for the posting of the cartoon (obtained from a local newspaper), and police personnel were not involved.
4. The beer can had been procured by two police officers (not involved in the Ipperwash police operation between September 4 and 6) in order to relieve tensions being experienced by Pinery Park staff who, apparently, feared they

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9 The names of these two police officers were not made public pursuant to an agreement reached among Commission Counsel and counsel for the OPP, OPPA, and Ontario, on the basis that as these officers were not on duty in relation to Ipperwash at any time over the course of September 4–6, 1995, and therefore their individual identities were not relevant to a discharge of my mandate.



might be taken hostage in the aftermath of the shooting incident. There was no intent of offending or being disrespectful to First Nations peoples. Notwithstanding the good intentions underlying their actions, their actions were inappropriate.

5. The coffee mugs were part of a tradition in the OPP of producing mementoes in the wake of joint operations or an amassing of personnel to reflect the camaraderie and *esprit de corps* of the people involved, and not the incident itself. Accordingly, the police officers acted properly in their actions.<sup>10</sup>
6. The T-shirt, similarly, was “an expected memento of policing involvement in major incidents,” and was part of an accepted practice within the OPP with the apparent approval of senior police officers. Hence, these T-shirts fell into the same category as the coffee mugs. Sergeant Adkin’s conclusion regarding the propriety of the police officers’ conduct in procuring these T-shirts is unclear though it appears from the recommendations that he concluded that no misconduct for purposes of discipline had occurred.
7. The OPP did not establish the Pinery/Ipperwash Park policy (which mandated the reporting by MNR staff of all First Nations people committing any type of offence on park property to the OPP), and hence no findings were required.

Staff Sergeant Adkin made three general recommendations with respect to the appropriate institutional response, none of which required disciplinary sanctions against the individual police officers found responsible. First, he recommended that the OPP investigate and pursue the need for cross-cultural training on Aboriginal issues. Second, he recommended that the OPP consider the merits of the practice of the manufacturing of mementoes in major events, and consider establishing guidelines. Third, he recommended that non-disciplinary discussions occur with the officers involved in the manufacture and display of the beer can and the bull’s eye and arrow appliqué.

The Professional Standards Bureau reviewed Staff Sergeant Adkin’s report, and pronounced its decisions (accepted by the subject officers):

1. informal discipline be provided in the form of an admonishment in respect of the beer can incident, on the basis that regardless of the intent, the beer

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10 Again, the police officers responsible for the creation of these mugs were not involved in the Ipperwash police operation at any time prior to September 7, 1995, and hence their identities were not made public. See my Ruling appended as Appendix 2 to this volume.

can was “offensive, threatening and to one, represented ‘drunken Indians’ being overpowered by OPP personnel”;

2. informal discipline be provided in the form of an admonishment in respect of the bull’s eye and arrow incident on the basis that, regardless of the subject police officers’ intentions, their actions were “insensitive, unprofessional and offensive, and have brought discredit upon the reputation of the OPP.”

The discovery of these mementoes also brought about an institutional response in the form of a new Police Order providing that, “except where authorized by the Commissioner, no OPP image shall be created or released without the written authorization of the respective regional or bureau commander.” As well, in July 1996, the OPP and the Ontario RCMP established the Commissioner’s Select Liaison Council on Aboriginal Affairs to enhance understanding and relationships with First Nations communities in response to these incidents. In addition, Maynard (Sam) George received a written apology from Commissioner O’Grady with respect to the “inappropriate memorabilia.”

Finally, the senior commissioned officers who knew about the mugs and/or T-shirts and failed to take any corrective action were subjected to a “non-disciplinary discussion.” This means that they were counselled with respect to their lack of insight and sensitivity in their failure to stop the continued dissemination of the T-shirts and/or mugs. As this did not amount to misconduct, nothing of an adverse nature would be noted on their records. Amongst the four commissioned officers subjected to this discussion was Incident Commander John Carson. According to Tony Parkin, the commissioned officers received the equivalent of an admonishment. The focus of the discussion was the need to be culturally sensitive.

### ***20.8.5 Mugs and T-Shirts (with Feather Symbol)***

The fact that a discipline investigation was undertaken does not end the inquiry into what might be taken from the impugned conduct that led to the creation of mugs, T-shirts, the beer can apparatus, the bull’s eye and arrow appliqué, and the other objects that were the subject of Staff Sergeant Adkin’s investigation. Indeed, Commissioner Boniface was, in hindsight, critical of the narrow focus of the investigation that failed to ask who had purchased the mugs and T-shirts, and the apparent weight placed by the investigator on the lack of malicious intention in judging the nature of the various mementoes. Chief Superintendent Coles agreed that the type of environment he would hope to promote was one in which the first officer who came across an offensive item such as the mug or T-shirt would raise it with his or her superior as a concern, and acknowledged that this did not



happen with these mugs and T-shirts. Insight into the behaviour of the participating police officers might be gained by a closer review of the situation, including who bought these mugs and T-shirts and what the images which they bore meant to those officers at the time of acquisition, and subsequently. This is important for at least two reasons. First, an examination into this conduct is necessary to determine whether, and if so, the extent to which, cultural insensitivity and racism existed within the OPP in the time frame surrounding the events in review. Second, because the views held by those who procured and/or purchased these “mementoes” immediately following the death of Dudley George may be indicators of views held during the course of this police operation, they could give insight into the conduct and behaviour of some officers during the incident.

I reviewed the testimony of those officers who participated in the confrontation on the night of September 6 at the sandy parking lot, and determined that several admitted to having bought or otherwise acquired a mug, a T-shirt, or both, which were the subject of this discipline investigation. Those officers were: Incident Commander John Carson, A/D/S/Sgt. Mark Wright, Constable Sam Poole, Constable Bill Bittner, Constable James Root, Constable Kevin York, Constable Steven Lorch, Sergeant Brad Seltzer, Constable Chris Martin, Sergeant Rob Graham, Detective Sergeant Don Bell, Constable Mark Gransden, Constable Richard Zupancic, Constable Wayde Jacklin, and Sergeant Robert Huntley. What struck me was that, almost without exception, at the time these police officers acquired the mug and/or T-shirt, none thought there was anything wrong with buying a souvenir, notwithstanding the surrounding circumstances of a tragic death, and none of these officers thought anything of the fact that the mementoes bore symbolism associated with Aboriginal culture.<sup>11</sup> According to Constable Wayde Jacklin,

I'd bought t-shirts before when I was with the U.N. in Cyprus. There was [*sic*] t-shirts ... and there wasn't any evil attached to it and this t-shirt ... all of a sudden there became some sort of sinister, evil glorification of something gone wrong. And that ... was not the intention of it at all and when I found that out, I parted with the t-shirt.

Furthermore, none of these officers appreciated at the time that the image of a feather on its side represented death in the local Aboriginal culture. For the most part these officers did not turn their mind to these issues. Furthermore, all initially believed that these images, and the objects themselves, were benign and

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11 Brad Seltzer and Don Bell were given a mug and, in the case of Officer Seltzer, a T-shirt. Both of these officers recognized that these were inappropriate objects and promptly disposed of them.

well intentioned, and hence that there was no inappropriateness in having these objects procured and available to fellow police officers for sale. Indeed, for the most part, these officers only disposed of the T-shirts and mugs once they found out, through the media or otherwise, that the images were in fact controversial, and deemed by some members of the First Nations' community to be disrespectful and offensive in light of the death of Dudley George.

One officer, Sergeant Brad Seltzer, disposed of his T-shirt and mug shortly after being given them, because he did not want to have a memento of a tragic event. He testified, "I do not need memorabilia to remind me of the time."

Both former Commissioner Boniface and Chief Superintendent Coles found the mugs and T-shirts to be unquestionably inappropriate and offensive given the context of the tragedy that occurred during the course of this police operation. In the margins of Sergeant Adkin's report, the then incoming Regional Commander for the Western Region, Gwen Boniface, noted in 1996 that the fact that an Aboriginal person had not been offended by the beer can with the feather sticking out of it was not relevant to determining the appropriateness of the beer can, mugs, T-shirts, and other paraphernalia. She testified at the Inquiry that the T-shirt exhibiting the feather was offensive as a memento of the death of someone and was highly inappropriate, and the feather on its side was, to her, insulting since it signalled death to her. She further testified that the mug with the arrow piercing the OPP crest was similarly offensive and inappropriate.

When First Nations OPP Constable Vince George saw these mugs and T-shirts being openly sold at the OPP Forest Detachment, he found these items to be immediately offensive and inappropriate in light of the death of Dudley George. He told Detective Constable George Speck to remove the items from public display, explaining that it was inappropriate to produce any kind of souvenir following a person's death. They were apparently removed as a result of Constable George's admonitions.

Inspector John Carson heard about the mugs with the arrow through the OPP shoulder flash and advised that they should not be made. However, when he was given a T-shirt with a feather lying underneath the OPP emblem, he did not think anything about it. He subsequently realized that the T-shirts were insensitive to the family. However, he did not appreciate at the time that the white feather lying horizontally signified a fallen warrior.

His conclusion in looking back at these objects was that "[t]he t-shirts are certainly insensitive ... The cups are clearly unacceptable and it's just absolutely inappropriate."

A/D/S/Sgt. Mark Wright confirmed that he had purchased a mug featuring the arrow design. When he was originally asked for his opinion on the T-shirt, he deferred to a fellow Aboriginal officer who said he was not offended by it.



However, he agreed that he implicitly approved of the design. A/D/S/Sgt. Wright admitted that he was embarrassed by the fact that it only dawned on him afterward that the mugs and T-shirts were inappropriate. Of significance, Mark Wright, Incident Commander Carson's effective second in command at the command post, advised that at the time the T-shirts were distributed, he had the feeling there was general agreement among the command staff that this was fine "because [he] knew some of the command staff had purchased the T-shirts."

#### ***20.8.6 Second T-Shirt (Anvil, Arrow, and TRU Symbol)***

There was a particularly revealing moment during the Inquiry of relevance to the current examination. It came during the testimony of Sergeant George Hebblethwaite, the second in command of the Crowd Management Unit deployed to the sandy parking lot on the evening of September 6, 1995. Until George Hebblethwaite's revelation, we thought there was only one version of a "souvenir" OPP T-shirt (the "feather" version), and so did the OPP. However, on May 11, 2006, during the course of examination-in-chief by my counsel, Officer Hebblethwaite displayed publicly, for the first time, a second such "souvenir" T-shirt.<sup>12</sup> This T-shirt was, by all accounts, more disturbing than the first. The image may be described as the TRU symbol (a sword) breaking an arrow in half over an anvil (meant to represent the ERT), and is depicted at the end of this chapter.

It should be noted that George Hebblethwaite voluntarily disclosed the existence of this T-shirt to his counsel, who in turn advised my Commission Counsel, prior to testifying.

Again, it is notable that none of the participating officers had insight into the negative connotations that can reasonably be drawn by others when viewing this image, much less the questionable judgment in procuring commemorative T-shirts of a policing operation that resulted in the death of an Aboriginal person and had such a traumatic impact on all, First Nations, OPP officers and local citizens, alike.

The procurer of this T-shirt model was Constable William David Klym. Constable Klym was a relatively new member of the TRU team on September 6, 1995, when he was partnered on the Alpha team with Constable Mark Beauchesne, and fired his long gun during the confrontation. Constable Klym came forward to the Inquiry voluntarily when he saw a newspaper article depicting this T-shirt in the wake of George Hebblethwaite's testimony at the Inquiry.

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<sup>12</sup> Officer Hebblethwaite preserved this T-shirt knowing that it might be required at the Inquiry, once he read about the controversy surrounding the T-shirt bearing the feather in the media.

Constable Klym testified that he was aware of the tradition amongst OPP members to produce T-shirts after successful joint force operations. He himself had acquired a number of such T-shirts. His intention in commissioning this particular T-shirt was “in recognition of the co-operative effort that took place that night between the London TRU team and the various ERT teams that were involved in the skirmish on that particular day.” This joint operation was significant to him because a certain amount of tension and apprehension had arisen between the ERT and TRU as a result of the relatively recently created ERT having taken over some of the traditional functions of TRU. Accordingly, he went to a T-shirt shop and asked the shop to design a few images or symbols that might depict the spirit of co-operation between these two police units that had collaborated for the first time on the night of September 6, 1995.

Before settling on the anvil and arrow design, Constable Klym consulted a number of OPP officers, though he accepted ultimate responsibility for the selection. While expressing his regret in retrospect for choosing this particular design, he explained that the image “was not meant to signify the death of Dudley George or the breaking of the First Nations community but rather to show the co-operative effort of TRU and ERT for the first time operating in a crowd management function together.” He testified that he sold between twenty to thirty T-shirts bearing this image, but only to members of the TRU and ERT who were engaged in the confrontation. He further testified that he never wore the T-shirt publicly, and has since disposed of it since the T-shirt no longer held the significance it once had. He added that he disposed of it after he left the TRU, implying that it no longer held significance for him because he was no longer part of the TRU.

As a result of this revelation during the Inquiry, the OPP launched a Professional Standards Bureau investigation into police conduct relating to this T-shirt.

Constable Klym admitted that, while at the time he authorized production of these T-shirts he did not appreciate the impropriety of creating this T-shirt, he now does. He now understands that there are many interpretations of his T-shirt that can be taken in a negative manner by First Nations people.

In particular, it was suggested to him that the image of an arrow, broken by the tip of the TRU sword symbol, over the anvil (intended to represent ERT, which did not have its own symbol yet) could reasonably be interpreted as representing the breaking of the First Nations occupiers, if not the First Nations community. While denying the latter, Constable Klym readily admitted the former interpretation was a reasonable one, though not the one he had intended to convey.



His interpretation of the image when he approved it, however, was as follows: “The broken arrow was to symbolize the occupiers that violently clashed with the ERT and TRU members that were on [the] ground that evening.”

Other members of the TRU team engaged in the confrontation bought these T-shirts.

ERT/CMU member Constable Mike Dougan admitted he purchased a T-shirt but later regretted having purchased it, and then disposed of it.

Sergeant George Hebblethwaite insisted that to him, the imagery reflected by the arrow being broken by the TRU sword symbol against the ERT anvil was not intended to be racist or negative. He testified, “[I]t was a symbol ... of an evening that was quite traumatic and a difficult time in my life.” He further stated: “It was never intended to be a representation or represented as something with malice, and hatred and racism ... [T]o me, it’s a personal item that reflects that I survived, as did my co-workers, a very significant confrontation.” On the other hand, he admitted:

I once suggested, from my vantage, that it represents all of the First Nations. To me it represented those persons that we had this confrontation with on the night of September 6th ... I understand how it is offensive today, and if I haven’t said it clearly, and I believe I have, I am sorry to Mr. George that this has been taken this way, I really am. It wasn’t my interpretation of it then, and it’s not the way I felt about the shirt or feel about the shirt; even ’til today it doesn’t represent that to me ...

Constable James Root, a member of TRU that evening, testified that when he bought one of these T-shirts, he interpreted the broken arrow and anvil and TRU sword as indicating a conflict between TRU, ERT, and the Aboriginal occupiers, but never saw it as indicating that TRU and ERT had won. He later realized that the logo was inappropriate in light of Dudley George’s death.

Constable Mark Beauchesne rationalized the arrow as indicating “violence” rather than the occupiers. Officer Beauchesne stated that the arrow was a symbol of an Aboriginal weapon or violence that the police broke.

Constable James Irvine saw the broken arrow as symbolizing the police having “repelled” the occupiers who “were attacking us.” He rationalized the use of the broken arrow symbolism in the following terms: “[T]o me that meant that people were trying to do harm to us and I guess the arrow can represent that that is the harm; it’s a weapon.” Later in his testimony, he expanded upon his rationalization of the use of the TRU sword as a symbol breaking the arrow against an ERT anvil:

To me, it's not about respect or lack of respect there; that symbol is the survival thing. And ... I don't know if you've ever been involved in a fight, but when you're dealing with so many people trying to do harm to so many police officers, that was just unprecedented in my world. And we survived that.

Whether the broken arrow was intended to symbolize a segment of the Aboriginal population or the entire Aboriginal community or the breaking of a symbolic Aboriginal weapon is beside the point. The use of broken arrow imagery in the wake of the Ipperwash incident was ill-advised, at minimum, and targeted a distinct group of people by their race through the use of stereotypical violent imagery. The fact that Constable Klym did not seek the official approval of any commissioned officers is little comfort. Similarly, the fact that this T-shirt was "private property" and not worn in public does little to address the concerns underlying such use of imagery by members of the OPP who were on the "front lines" during the evening of September 6, 1995. It is significant that, but for the Inquiry, this T-shirt, and its violent imagery publicly identified with Aboriginal peoples, would have escaped the notice of the public and the OPP.

Sergeant Brad Seltzer agreed that, given the full details of the event as he knew them, Sam George might be forgiven for thinking that people who received the T-shirts showing the TRU breaking an arrow over an ERT anvil did not feel the same sense of tragedy he felt.

The imagery on this ill-advised T-shirt represents the use of a negative stereotypical symbol that targets Aboriginal people within the context of the TRU and ERT teams deployed that evening exercising power of superiority over the Aboriginal occupiers in the form of the (Aboriginal) broken arrow shattered by the combined strength of the (TRU) sword and the (ERT) anvil. From this perspective, these T-shirts contain racist imagery, notwithstanding the lack of intention by the implicated officers in procuring and buying them. Also problematic is the fact that, at the time of acquiring them, none of the officers who testified gave any thought to the insensitivity of making and obtaining souvenirs of an event that resulted in a tragic death. Indeed, I was disturbed by the ongoing defence of the T-shirt by certain officers who testified, conceding only that they could see how such a T-shirt might offend the victims of this tragedy.

#### ***20.8.7 Conclusion — The Racist and Culturally Insensitive Comments and Memorabilia***

The tragedy behind the inappropriate memorabilia procured by certain members of the OPP in the wake of the death of Dudley George and the offensive comments uttered by certain police officers lies in the lack of thought and insight by those



officers as to how those who belong to the affected Aboriginal community, and particularly those who were affected by the loss of Dudley George, might reasonably react to those words and images. This conduct reflects a fundamental lack of sensitivity, in both the cultural and humane senses, by professional police officers. We, as a society, are reliant on the use of good judgment by professional police officers to do everything in their power to contain and de-escalate highly tense situations. The failure to exercise good and sensible judgment by the implicated officers between September 5 and 6 and the days following the death of Dudley George, when tensions and fears were very high, may reveal something about why the OPP was unable to resolve this matter in a timely and peaceful manner consistent with the stated objectives of Project Maple. If this lack of sensitivity was prominent in the days immediately following this event amongst those officers who participated in the event, it is reasonable to infer that these officers went into the confrontation with the same lack of sensitivity. At the very least, both the post-shooting conduct (as manifested in the mugs, T-shirts, beer can symbol, and the bull's eye and arrow appliqué,) and the racist and culturally insensitive comments made during the course of the police operation on September 5 and 6, 1995, are suggestive of an invisible barrier that prevented a timely, peaceful resolution to the occupation by reflecting an “us versus them” mentality, and caused the Aboriginal occupiers to maintain their preconceptions about the police in terms of their attitudes toward the Aboriginal occupiers and the motives underlying the actions of the occupiers.<sup>13</sup> The discovery of these comments and the memorabilia after the fact of the shooting may also impair future dialogue in other high-tension Aboriginal disputes as they seemingly justify a belief held by some Aboriginal peoples that some members of the OPP look upon them in derogatory, if not dehumanizing, ways. All this is counterproductive, to say the least, to the initiation of productive dialogue built on mutual trust and respect, which, as I suggested at the outset of this section, is the cornerstone of productive and peaceful negotiations.

As Chief Superintendent Chris Coles agreed during the course of his testimony (before the revelation of the broken arrow T-shirt), the mugs, T-shirts, and the beer can with the feather are red flags for a manager since “[t]hey’re a window in[to] the minds of some people in the organization.” He further agreed that he would want to promote an environment where the first officer who comes across such items of memorabilia denounces it and raises it with his or her

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13 Commissioner Boniface expressed a similar sentiment, justifying the launching of an internal investigation by the Professional Standards Bureau.

superior. He further acknowledged that in the case of the memorabilia, that clearly did not happen.

It is important to acknowledge that since this tragic event, the OPP have taken many positive steps toward promoting cultural sensitivity and eliminating racism within its own organization and building a constructive relationship with the First Nations communities, as discussed in Part II of this report.

Some of the recommendations that I have made in this chapter regarding the discipline regime, and in Part II of the report, are aimed at achieving these objectives.

#### ***20.8.8 MNR Ipperwash/Pinery Park Policing Policy***

In July 1993, Les Kobayashi altered Ipperwash Park's Enforcement Plan. He put in place a procedure to deal specifically with incidents involving First Nations people at the park. He stated that it was instituted in response to an "escalation" in occurrences at the park and the surrounding areas after the occupation of the army camp.

In the summer of 1994, the park witnessed a further increase in the number of incidents involving park users and First Nations people, prompting Les Kobayashi to meet with the OPP Forest Detachment Commander. At that meeting, he agreed that his Ipperwash Park staff would effectively become the "eyes and ears" of the OPP.

At the outset of the 1994–95 park season, a status quo security enforcement procedure remained in place; namely, the park staff would deal with minor infractions and occurrences, and would refer more serious complaints to the OPP, regardless of who the offender and/or instigator was.

That procedure changed in August of 1995. By memorandum to all Park Wardens, dated August 18, 1995, entitled "Procedures Dealing with First Nations People," the MNR instituted an enforcement policy that only applied to Aboriginal people:

##### **(6) When Park Wardens Observes First Nations People In the Park:**

If a Park Warden observes a First nations person in the Park they shall record it in their notebooks.

1. What campsite they are going to?
2. What they were wearing?
3. If they were wearing any colours or usual clothing.
4. What times they were observed.



Someone astutely queried in notations handwritten beside this article whether this procedure applied only to those First Nations people observed in the course of committing an offence, or whether it applied to all First Nations people merely by their attendance at the park. A park employee authored it with copies to Don Matheson, Les Kobayashi, and Staff Sergeant Charlie Bouwman of the OPP Grand Bend Detachment.

On August 28, 1995, the MNR issued a second memorandum to all Park Wardens entitled “Procedures Dealing with First Nations People” in which Article 6 of the August 18 memorandum was amended. It read, in the material parts, as follows:

(1) First Nations Persons in Contravention of a Law

Park Wardens are to be the eyes and ears for the O.P.P. When a First Nations Person has contravened the law, Park Wardens shall contact the O.P.P. immediately and advise the officers who are dispatched what offences can be charged and direct the O.P.P. constables to lay the charges

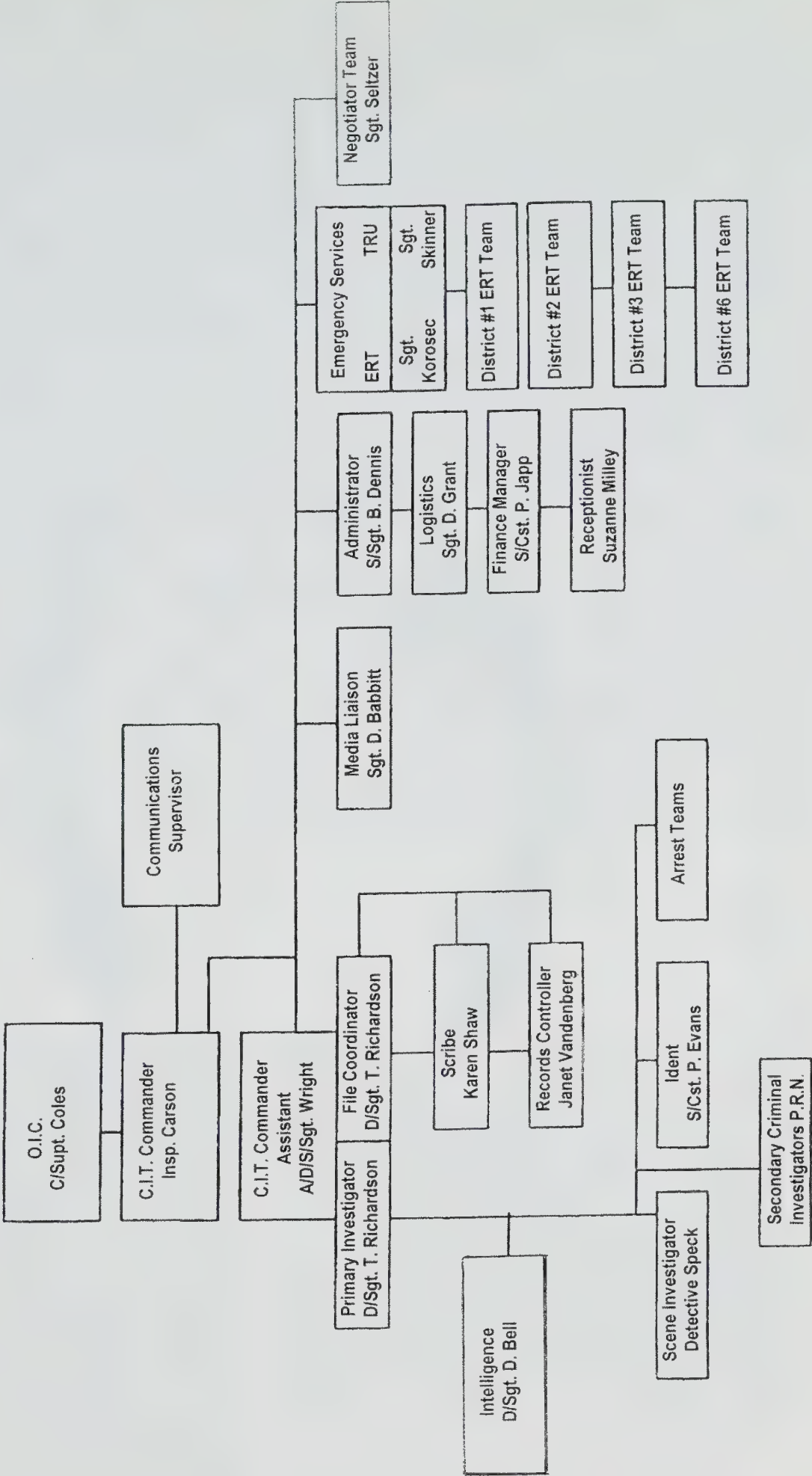
(6) Offence Reporting

If a Park Warden observes a First Nations Person who is committing an offence or has committed a contravention of the Federal or Provincial Statutes in the Park, they shall record it in their notebooks, complete an occurrence report about the incident and contact the O.P.P. to investigate and lay the necessary charges.

This was a departure from previous practice, in which Park Wardens or park security officers or conservation officers would only contact the OPP in the event of “the major Criminal Code issues” that were beyond what could be reasonably handled by MNR employees. Further, and more importantly, it was a departure from previous practice insofar as it explicitly targeted a segment of the population by their race; namely, First Nations people. Again, the memorandum was copied to Don Matheson, Les Kobayashi, and Staff Sergeant Charlie Bouwman at the OPP Grand Bend Detachment.

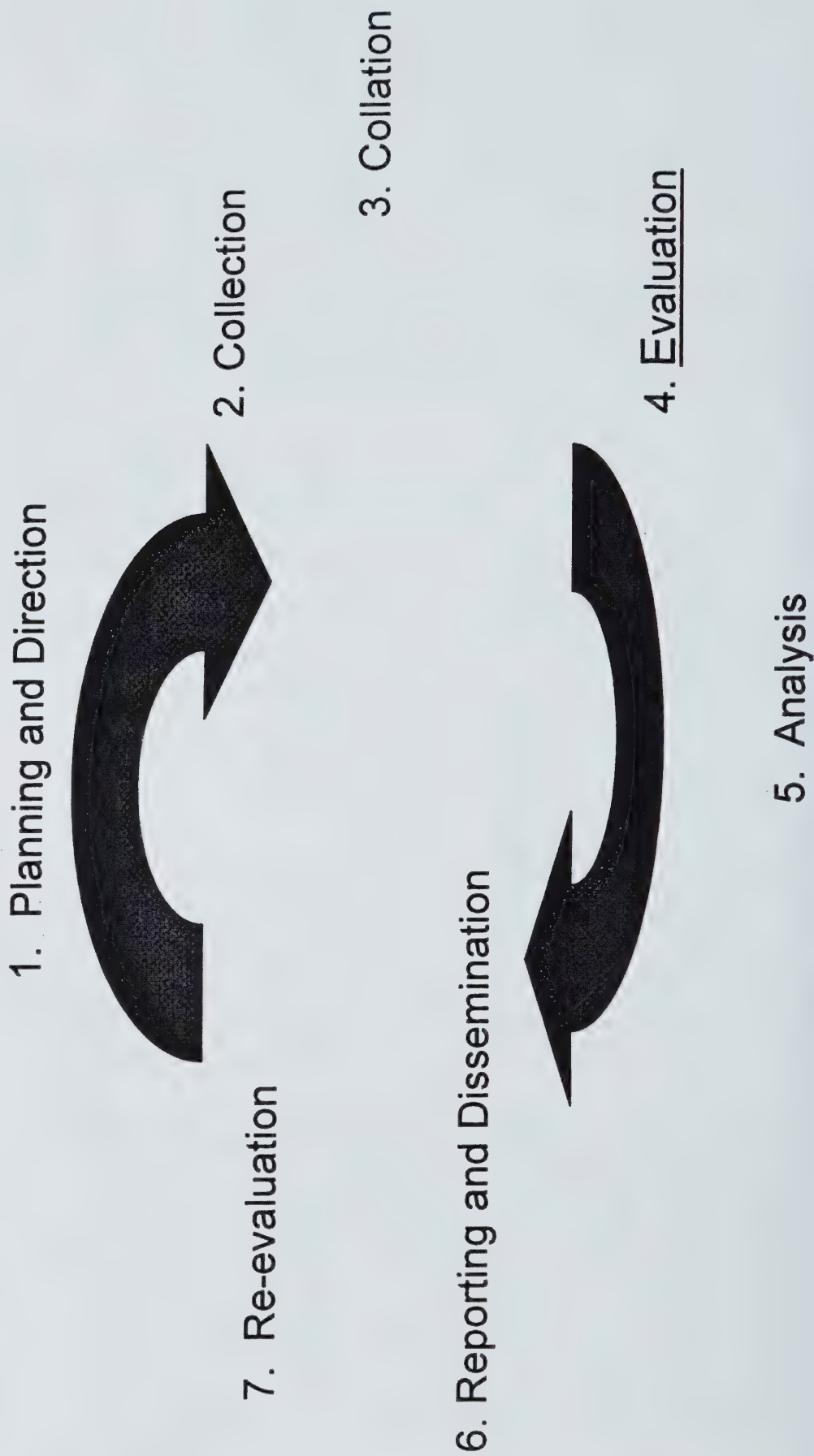
Again, the impetus for this and the predecessor policy was a perceived increase in tensions between park users and First Nations peoples. Mr. Kobayashi testified that the Senior Park Warden wanted to ensure that the appropriate procedures were in place to deal with any problems associated with Aboriginal people in the park. Mr. Kobayashi confirmed that his staff agreed to be the eyes and ears for

Coordinated Investigation Team (CIT) Organizational Chart





# The Intelligence Cycle Diagram



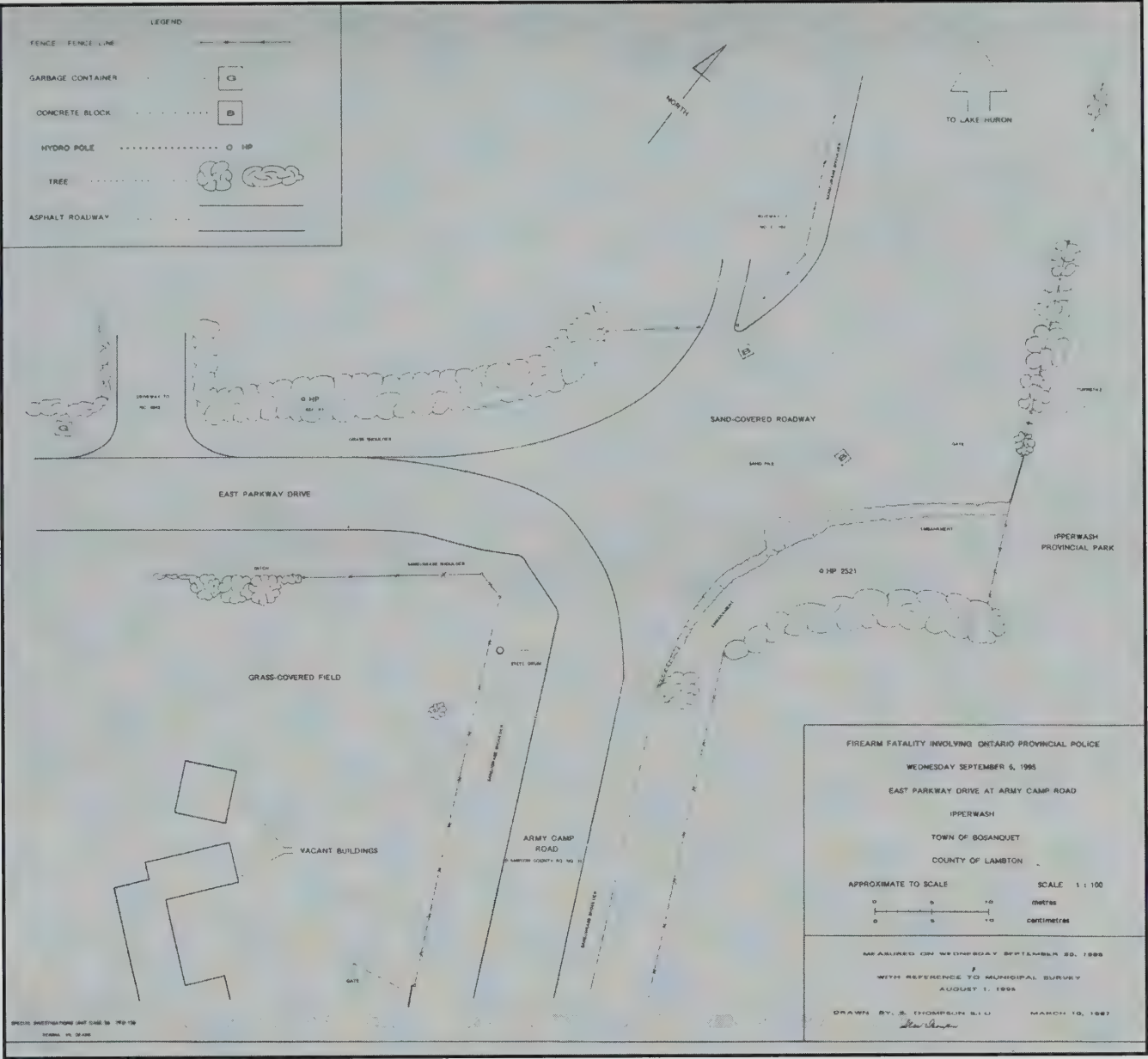


Exhibit P-23: Map of the shooting scene drawn on September 20, 1995, by Stan Thompson, SIU investigator.



Exhibit P-448: Police shield in use in 1995.

Exhibit P-448: Police helmet in use without badge numbers in 1995.





Exhibit P-340: OPP command posts with St. John Ambulance markings in use in 1995. These two vehicles were used during the Ipperwash confrontation.





Exhibit P-24-photo 19: The car belonging to Pierre George that transported Dudley George to the Strathroy Hospital after the shooting.



Exhibit P-24-photo 44: Car belonging to Warren George that the OPP was looking for after the shooting.



Exhibit P-24-photo 46: Close-up of driver side bullet holes in Warren George's car.

Exhibit P-24-photo 36: Close up of the damage caused by a bullet fired at the school bus driven by Nicholas Cotrelle, 16 years old in 1995.





Exhibit P-131: A female OPP constable in battle gear confronts Tina George the day after the shooting. The scene was captured by a photographer from the Toronto Sun newspaper on September 7, 1995.



Exhibit P-24-photo 4: The scene of the confrontation and the shooting of Dudley George, facing west on East Parkway Drive. The sandy parking lot is on the right, Army Camp Road on the left.





Exhibit 24-photo 21: The burnt out store at the Provincial Park.



Exhibit 1495: One of the T-shirts that OPP members had made after the 1995 incident.





Exhibit P-458: Another T-shirt made for OPP members after the incident.



Exhibit P-458: Mugs commissioned by OPP members.

the OPP in terms of particular occurrences or incidents that involved campers and First Nations people.

In his discipline report, Staff Sergeant Adkins found that this was an MNR policy and had not been the product of any OPP officer, and left it at that.

However, Staff Sergeant Charlie Bouwman had admitted that he had played a role in the design of this policy. This led Superintendent Tony Parkin to agree that the MNR policy addressed special policing of First Nations people and, as such, was unacceptable.

Commissioner Boniface echoed a similar condemnation of this policy, agreeing that it was not permissible in our multicultural society to have special policing of any particular ethnic group.

This policy is an example of inappropriate race-biased policing, which is unacceptable in our society. Its discovery after the events of September 6 nonetheless serves as another example of a barrier that may alienate First Nations people from the OPP as well as the Ministry of Natural Resources. Hopefully, both the MNR and the OPP have learned that such policies are unacceptable as acknowledged by Commissioner Boniface.

#### ***20.8.9 OPP Response to Culturally Insensitive and Racist Conduct***

As stated above, the OPP initiated internal discipline investigations to inquire into the T-shirts (both versions), mugs, the beer can with feather and OPP tape, the bull's eye and arrow appliqué, cartoons (determined to be the responsibility of an MNR worker), the Whitehead and Dyke exchange, and various tape-recorded comments made by police officers assigned to Project Maple. Some resulted in informal disciplinary measures, while others resulted in a finding of no police misconduct. Still others were without any substantive sanction due to the retirement of subject officers. One investigation (the arrow and anvil T-shirt) was, as at the closing of the evidentiary hearings, ongoing. None of these incidents went to formal disciplinary proceedings, meaning that none of the police officers in question have a permanent record of misconduct. Also, but for this Public Inquiry, many of these examples of racist and culturally insensitive conduct would never have been brought to the public's or to the government's attention.

The OPP also responded at an institutional level. It amended police orders to require that, except where authorized by the Commissioner, the use of OPP official images be approved by the Commissioner or a Regional or Bureau Commander. It enhanced its Aboriginal awareness training program. A Commissioner's Select Liaison Council on Aboriginal Affairs was struck. It



issued a written apology to Sam George and his family (relating to the initial Parkin Complaint incidents). Also, four commissioned officers, including John Carson, were the subject of a non-disciplinary discussion regarding their failure to recognize the offensive nature of the “memorabilia” of which they had knowledge. Indeed, Superintendent Parkin testified that the fact that the Incident Commander had a T-shirt and had not seen any problem with it was “a concern” because in the circumstances, “it was clearly inappropriate and ill advised ... to be making mementos.”

During the course of the hearing, Commissioner Boniface also repeated the apology conveyed by her predecessor, Thomas O’Grady, to Sam George and his family:

Firstly, I want to re-iterate my predecessor, Commissioner O’Grady’s, deepest apology and sympathy to you and your family for the loss of your brother Dudley ... T-shirts, mugs, inappropriate comments, more T-shirts, I know have caused you further pain and I deeply regret that.

During the course of the evidence, however, some legitimate criticisms were raised with, and accepted by, some of the witnesses. One example was the apparently narrow scope of the investigation into the T-shirts and mugs. Commissioner Boniface accepted the proposition that all of the police officers who were significant players in the enforcement initiative on September 6, and who had purchased or acquired T-shirts, should have been interviewed as a matter of proper investigation protocols. Another example was the apparent emphasis the investigator, Staff Sergeant Adkin, placed on a lack of intent to be offensive or culturally insensitive on determining the character of the conduct (as opposed to informing the appropriate penalty or sanction).

A moment of embarrassment to the OPP was occasioned by the late, mid-Inquiry, discovery of the disturbing anvil and arrow T-shirt. Through her counsel, Commissioner Boniface responded to this event by stating that she was “shocked and appalled.”

Another shortcoming of the discipline investigation process was revealed in the failure of those officers who were aware of the existence of the second T-shirt (bearing the symbols of the ERT anvil, TRU hammer and Aboriginal broken arrow) to report its existence to the investigating officer so that the investigation could be expanded to include a review of this further item of memorabilia.

This type of post-shooting conduct is relevant to my examination of the events surrounding the death of Dudley George and my recommendations regarding the prevention of similar acts of violence in the future because it reflects the kind of stereotypical attitude that undermines the efforts of the policing operation

to initiate dialogue by undermining the credibility of the OPP as a neutral policing organization. While this T-shirt was made after the death of Dudley George, it again reflects a disturbing attitude on the part of certain officers that may serve to validate the perceptions of certain Aboriginal people that the OPP does not respect them, and undermine legitimate efforts by the police to initiate communication. As observed by Ovide Mercredi, creating these types of commemorative items “does nothing to restore normal relations between the Aboriginal community and the police. It does the opposite.”

#### ***20.8.10 MNR Response to Culturally Insensitive and Racist Conduct***

Peter Sturdy became aware of the mugs, T-shirts, cartoons, and other items from Ipperwash and Pinery Park Superintendent Les Kobayashi. He understood that a Pinery Park First Nations employee, Stan Cloud, initially raised his concern about the items. Mr. Cloud advised that these various matters poisoned his workplace environment. In so doing, Mr. Cloud’s complaint raised the branch of adverse impact racial discrimination (as opposed to overt racism) discussed at the outset of this section.

Mr. Sturdy further understood that the OPP was conducting an internal investigation into whether any MNR employees had played any role in these incidents. Ultimately Mr. Kobayashi informed him that the OPP had determined that a park kitchen contract employee had posted the cartoon, and that that was the extent of MNR involvement. He agreed with Mr. Kobayashi’s conclusion that the cartoon was posted with “no discriminatory intent” and was meant to be a joke for the OPP (to calm tensions that were extremely high in the days following the shooting death of Dudley George).

Mr. Kobayashi testified that when Stan Cloud advised him of the mugs, T-shirts, cartoons, beer can, and other items, he was distraught and brought it immediately to the attention of the OPP. He took this matter to the OPP in light of its seriousness, and the fact that TRU and ERT teams were housed at the Pinery Park facility, thereby leading him to suspect that certain members of the OPP were responsible for some or all of these items. He asked his Assistant Park Superintendent, the late Don Matheson, to conduct an internal investigation to determine the extent of any possible MNR employee involvement.

Mr. Matheson determined that a temporary female kitchen worker was responsible for posting the cartoon. Mr. Matheson did not discipline her, but did speak to her about the inappropriateness of her actions, and ensured that the cartoon was removed. Mr. Kobayashi was content with that response.

Mr. Kobayashi sent a report to Mr. Sturdy reporting on the outcome of the investigation.



In retrospect, Mr. Kobayashi agreed that Mr. Matheson should have detected some or all of these items before Mr. Cloud raised the complaint. In light of that likelihood, and Mr. Matheson's failure to respond prior to the complaint, Mr. Kobayashi agreed that Mr. Matheson was likely not the right person to have investigated the incident.

Furthermore, he was concerned that no other MNR employee had taken the matter up with any superiors given the discriminatory nature of the items. He also agreed that under "normal circumstances," a more severe penalty would likely have been warranted against the kitchen worker. He believed, however, that the high degree of anxiety and tension pervading the atmosphere at Pinery Park justified the lax response so as not to inflame the situation.

### *20.8.11 The Political Response to Cultural Insensitivity and Racism*

The Minister of Natural Resources, Chris Hodgson, was never told about Stan Cloud's complaint. He testified that while normally employment-related matters would be handled through the Deputy Minister's officer, and not him, in these particular circumstances he should have at least been apprised of the situation. Hence he did not know that one of the Ministry's employees had raised a concern about the existence of a poisoned work environment on the basis of adverse impact racial discrimination or the existence of the memorabilia, or the role played by the MNR kitchen worker regarding the posting of the cartoon, or the existence or outcome of the OPP's internal investigation. He agreed that if he had been alerted to the fact of the complaint, and the apparent lack of response by any of the MNR employees working at the Pinery Park to seeing these objects, that would have alerted him to the possible need for an institutional response such as further education of park employees from a policy point of view.

On the other hand, the then Solicitor General, Robert Runciman, was aware of the existence of the memorabilia and the resulting OPP internal investigation in a general way. However, the Solicitor General plays no role in specific disciplinary matters within the OPP. Hence, he was not apprised of the specifics of the investigation. Nonetheless, he was "upset and shocked" by the revelation about this memorabilia, "because of the fact that this had occurred shortly after the death of Mr. George and the insensitivity to the loss of a member of their family." He agreed that this factor made the memorabilia a matter of serious misconduct.

Mr. Runciman characterized the mugs and T-shirts as insensitive and inappropriate but did not believe them to be racist. He accepted the OPP's conclusion that at the root of the paraphernalia was a systemic problem of cultural insensitivity amongst police officers that required an institutional response. He agreed

that certain comments made in the exchange between Detective Constable Dyke and Detective Constable Whitehead crossed the line from being culturally insensitive to racist.

Mr. Runciman agreed with the following positions during his cross-examination:

1. If there is racism among police officers, it is a very serious matter, because police officers have a great deal of power and they exercise force.
2. If police officers have racist attitudes, and they have that power, and they are dealing with people who are members of the group against whom they have racist attitudes, that could be very serious.
3. Further, if police officers have racist attitudes in these circumstances, it can lead to injury and even death.
4. It is very important that police officers be made aware of the fact that racism on a police force will not be tolerated.
5. In his role as Solicitor General, one of his responsibilities would be to ensure that there are policies in place to make certain, as best as he and his Ministry can, that police officers are made aware of the intolerance of racism on a police force.

I am in complete agreement with these positions.

As I state in Part II of my report, in Chapter 11, “Bias-Free Policing,” I was disturbed by the manner in which the OPP dealt with the tape-recorded racist remarks uttered by police officers as described earlier in this chapter. One of the disturbing aspects was the decision to allow the Darryl Whitehead complaint to proceed to informal discipline. I also discuss the appropriateness of informal discipline to address allegations of culturally insensitive or racist behaviour by police officers in Chapter 11 of Part II. As well, I discuss the role of the new Independent Police Review Director that will be created once Bill 103, the *Independent Police Review Act*, is passed into law. Whenever there are allegations of racism against the police, in order to ensure transparency in the disciplinary process and accountability in terms of the outcome, the allegation must be available for public scrutiny. Once in the public forum of the formal discipline process, such complaints will be available to the Minister responsible for the OPP so that he or she can determine whether appropriate changes at a policy or legislative level are required in order to properly respond to these types of serious allegations. I expand upon this recommendation in Part II of my report.





## CONCLUSION

Given what can be retrieved from memory of events that occurred more than a decade ago, and from the documentary record, I have inquired into and reported on events surrounding the death of Dudley George. I have also made many recommendations regarding what should be done to avoid violence in similar circumstances.

Ipperwash has always been controversial. Questions about the death of Dudley George were raised almost immediately: How could an apparently peaceful occupation and protest turn violent? What was the urgency in taking action? What was the role of the Premier and other senior government officials? What was the role of the federal government? Was racism or cultural insensitivity a factor? These and many other questions about Ipperwash have been answered in this report. What follows is a summary of the answers to some of the more important questions raised by the events of September 1995.

### **1. Why is Ipperwash important?**

Over time, questions about the circumstances of Mr. George's death deepened. New information cast doubts on the original explanations of events at Ipperwash when it became clear that many of the initial reports were likely incorrect, particularly the early, unconfirmed reports that the occupiers had guns. Acting Sergeant Kenneth Deane's criminal conviction raised further questions about the propriety of the OPP's actions. Years of media reports and lawsuits intensified the long-standing but unproven allegations of political interference in police decision-making.

Ipperwash raised even more profound questions for Aboriginal peoples. Mr. George was the first Aboriginal person to be killed in a land rights dispute in Canada since the 19<sup>th</sup> century. To many Aboriginal peoples, the shooting of Dudley George was the inevitable result of centuries of discrimination and dispossession. Many Aboriginal peoples also believed that the explanation for killing an unarmed Aboriginal occupier in a peaceful demonstration was rooted in racism. From this perspective, Ipperwash revealed a deep schism in Canada's relationship with its Aboriginal peoples and was symbolic of a long and sad history of government policy that harmed their long-term interests.

Ipperwash is important because public officials and institutions need to be held accountable for their decisions and actions. Their credibility and legitimacy depend on knowing if, or how, they were involved in the death of an unarmed, peaceful protester.



Ipperwash is also important because it helps us understand the roots and dynamics of an Aboriginal protest. The Aboriginal occupation at Caledonia proves that Ipperwash was not an isolated event. Understanding Ipperwash can help us understand how to prevent Aboriginal occupations and protests in the first place or how to reduce the risk of violence if they occur.

Finally, Ipperwash is important to the future of Aboriginal and non-Aboriginal peoples in this province. There can be no reconciliation without truth. The truth must come out so that Aboriginal and non-Aboriginal Ontarians can move forward together to our collective future.

## 2. Why did Aboriginal peoples occupy Ipperwash Provincial Park?

The Aboriginal people who entered Ipperwash Provincial Park on September 4, 1995 were trying to take back land they believed had been improperly taken from them decades earlier by the federal and provincial governments. The occupation of the army camp and subsequently of the park was the culmination of years of Aboriginal resistance and frustration.

It is important not to overlook the long history of protest by the Kettle Point and Stoney Point communities *before* the occupation of the park in September 1995. This history is vital to understanding Ipperwash and the death of Dudley George.

The roots of the Ipperwash occupation go back as far as 1763, when King George III made the protection of Aboriginal land an official Crown policy. The 1763 *Royal Proclamation* established an “Indian country” where Aboriginal land was protected from encroachment or settlement. The *Royal Proclamation* established that territory beyond the settled colonies was forbidden unless it was voluntarily ceded to the Crown before non-Aboriginal settlers could occupy it. The Proclamation was intended to impose the Crown between the settlers and the Indians in order to avoid exploitation.

The fundamental commitment of the *Royal Proclamation* of 1763 was that First Nations were to be treated with honour and justice. The British government promised to protect Aboriginal lands from encroachment by settlers. Settlers could settle only on land that an Indian nation had ceded to the Crown. A year later, when Sir William Johnson came to Niagara Falls to explain the *Royal Proclamation* to 1,500 Anishnabek chiefs and warriors, he consummated the alliance with the Anishnabek by presenting two magnificent wampum belts, which embodied the promises contained in the Proclamation.

The Huron Tract Treaty of 1827, which resulted in the creation of the Kettle Point and Stoney Point reserves, was one of several treaties in which the Crown acquired First Nations lands to be used for settlements.

The detailed account of the negotiations leading up to the Huron Tract Treaty described in this volume of the report demonstrates that First Nations ended up ceding much more land than originally intended, and for considerably less compensation than their people had hoped to receive. In return for ceding over two million acres of their land, they retained four reserves for their exclusive use and occupation, which constituted less than one percent of their land.

Beginning in 1912, the Kettle and Stoney Point communities were under further pressure to surrender more land to the federal government. In 1927, part of the Kettle Point beachfront was surrendered, and in 1928, all of the Stoney Point beachfront was surrendered. Part of the Stoney Point lands were soon sold to the provincial government at three times the price paid to the First Nation by the federal government. Ipperwash Provincial Park was created out of these lands in 1936 after local residents agitated for an accessible beachfront.

The circumstances of the 1927 surrender have remained contentious with the First Nation for decades. The Kettle and Stony Point First Nation challenged the legality of this surrender in the 1990s. Although the courts found the surrender of the land legally valid, the Court stated that the transactions had “the odour of moral failure”. The Ontario Court of Appeal subsequently suggested that the federal government’s “tainted dealings” might amount to a breach of its fiduciary duty to the First Nation. The 1928 surrender of the Stoney Point beach lands that included the Provincial Park has not been considered by the courts; however, the evidence before me indicated that the circumstances surrounding the 1928 surrender at Stoney Point had similar characteristics.

In 1942, the federal government appropriated the entire Stoney Point reserve in a manner unprecedented in Canadian history. The appropriation was contrary to the expressed wishes of the Kettle and Stony Point Band. It also contravened the treaty obligations of the Crown and the procedures and principles the Crown was required to observe in its dealings with Aboriginal lands. The appropriation was carried out pursuant to the emergency powers under the *War Measures Act*, which were interpreted such that the government was entitled to override the treaty rights of the Kettle and Stony Point First Nation.

First Nation soldiers from Stoney Point, returning from the War, were shocked to see their community destroyed. They were devastated to learn that the Canadian government had appropriated the reserve land, that their community no longer existed, and that the Stoney Point cemetery had been desecrated.

When the Department of National Defence (DND) appropriated the reserve from the Kettle and Stony Point First Nation in 1942, it promised to return it to them after the war if it was no longer required for military purposes.

World War Two ended in 1945 and the federal government has still not returned the Stoney Point reserve. Over that period, the federal government has



been responsible for many false hopes and broken promises to return the reserve. The most notable example was when former Prime Minister Jean Chrétien, then the Minister of Indian Affairs, made a concerted effort in the early 1970's to push the DND to return the Stoney Point Reserve. Contrary to Mr. Chrétien's expectations, the DND was simply not interested.

In 1990, the DND granted a Stoney Point group permission to bury one of its people, Dan George, at the Stoney Point cemetery. This raised the hopes of the Aboriginal people that the federal government would soon return the land.

A round of active political protest at Camp Ipperwash began about July 1990. Starting then, Aboriginal peoples took a series of increasingly assertive steps to get governments to return the land that they believed was rightfully theirs. In 1993, exasperated with their failed attempts to have their reserve returned, people from Stoney Point decided to occupy the military range at Camp Ipperwash. For them, the occupation of Ipperwash Provincial Park in September 1995 was the natural next step after the occupation of the adjacent military range in 1993 and the occupation of the military barracks in July 1995. The occupiers hoped to attract the attention of the federal government to return the land.

### **3. Was the provincial government prepared for the occupation?**

The provincial government's position at both the civil service and political levels in the summer of 1995 was to treat Ipperwash as a "watching brief." This was understandable. A new provincial government had just been elected. Nothing significant had happened to the provincial park. It was summertime and it was easy to blame the federal government for the problem. However, although they were aware that there was the potential for an occupation, provincial government officials did not make sufficient efforts during this period to inform themselves about the Aboriginal peoples' historic grievances or to identify and appoint a mediator who might have headed off the occupation.

Ipperwash might have turned out differently if the provincial government had taken more assertive steps to defuse the growing tension and try to prevent the occupation in the first place. The provincial government could have appointed a mediator or tried to understand the historic grievances of the Stoney Point people, including the claims of an Aboriginal burial site in the park. It could have reached out to Stoney Point people, learned more about the dynamics within the community, or proactively identified potential mediators or facilitators.

We do not know if these actions would have prevented the occupation or Dudley George's death. However, we do know that relationship building and establishing communications *before* an occupation increases the likelihood of

peaceful outcomes by helping to build trust and confidence between governments, police and occupiers. These relationships could have proven helpful to defuse tensions when the occupation eventually did take place.

#### **4. Did the provincial government respond appropriately to the occupation?**

Premier Harris believed that the occupation was a law enforcement issue, not a First Nation's matter. It was the Premier's position that the park belonged to the province; he therefore concluded that the occupiers were trespassing. As there was no evidence available to him at that time to support the claim of a burial site, he was not prepared to contemplate the occupiers' suggestion that there was one or that the park belonged to them. In light of this, no consideration was given to the possibility of third-party involvement for the purposes of negotiation with the occupiers.

The evidence demonstrated that the Premier and his officials wanted the occupation to end quickly, but there is no evidence to suggest that either the Premier or any official in his government was responsible for Mr. George's death.

The evidence demonstrated that Premier Harris and his officials had a different perspective than the OPP on how the occupation should be handled by the police. The OPP's wish to pursue a go-slow approach contrasted with the government's desire for a quick end to the occupation. Civil service officials agreed in principle with the OPP's approach, but deferred to their political masters on questions of policy.

The provincial government's imperative for a speedy conclusion to the occupation is difficult to justify by events on the ground. The provincial park was closed for the season. There were no campers in the park. Nor was there any proven, substantial risk to public safety that would justify this urgency. In short, there did not appear to be any public safety justification for a "hawkish" response.

The provincial government's priorities reflected its larger concerns about the potential *implications* of Ipperwash. The government was concerned about establishing a precedent for Oka-like occupations in the future. The government also wanted to prove that it was tough on 'lawbreakers' and that Aboriginal peoples would be treated the same as everyone else. The government also did not want a prolonged occupation to deflect it from its larger agenda.

Whether one agrees with these decisions or not, they were within the authority of the provincial government to establish policy, including the policy of how to respond to the occupation at Ipperwash. However, once the Premier and the provincial government established these policies they are accountable for them.



The imperative for speed foreclosed the possibility of initiating a constructive dialogue with the occupiers or others on ways to resolve the occupation peacefully and, as a result, the potential for a peaceful, negotiated resolution became less likely.

## **5. Was there political interference in police decision-making?**

The allegation of political interference in OPP operations and decision-making was one of most significant concerns about Ipperwash. It was therefore the subject of intense interest at the evidentiary hearings and analyzed in detail in our policy review of police/government relations, found in Volume 2.

The provincial government had the authority to establish policing policy, but not to direct police operations. The Premier and his government did not cross this line. There is no evidence to suggest that either the Premier or his government directed the OPP to march down the road toward Ipperwash Provincial Park, on the evening of September 6.

Incident Commander Carson knew of the Premier's desire for a quick resolution to the occupation, as did other members of the OPP directly involved in the policing of the occupation. This was unfortunate and should not have occurred. However, having this information does not constitute political interference nor does it mean that Incident Commander Carson or any other member of the OPP involved in the policing of the occupation were influenced by it, in their operational decision-making. Although the Incident Commander was aware of the Premier's desire for a quick resolution when he left for dinner at 7:00 pm, he expected that the status quo would be continued through the night. Earlier in the day, the Premier had expressed his desire that the occupiers be out of the park and the occupation ended, but later that night, when Inspector Carson decided to deploy the CMU and TRU, it was with the express objective of ensuring that the occupiers went back into and stayed in the park, not to remove them from the park.

This is not to say that the interaction between the police and government at Ipperwash was proper or conducive to a peaceful resolution. There was a considerable lack of understanding about the appropriate relationship between police and government. This lack of understanding had significant consequences. An important example is the overlapping and sometimes contradictory reports provided to the provincial government by the OPP and officials from the Ministry of Natural Resources (MNR). MNR officials circulated unverified, inaccurate and extremely provocative reports about automatic gunfire in the park at government meetings. MNR officials did not have the expertise to assess the reliability or accuracy of these reports, nor were they aware of the potential implications of passing this unverified information directly to the Interministerial Committee

composed of political staff, civil servants, and seconded OPP officers, one of whom was in contact with the Incident Commander. Lines of communication and chains of command were blurred. There was also a lack of clarity regarding the relationship between political staff and professional civil servants.

Taken together, the interaction between the police and government at Ipperwash created the appearance of inappropriate interference in police operations.

Another fundamental problem in police/government relations at Ipperwash is that key decisions were neither transparent nor accountable. A large part of the Inquiry was devoted to discovering what transpired at several Interministerial Committee meetings and at the “dining room meeting” on September 6, 1995. This is the meeting in which the Premier, several Cabinet ministers and deputy ministers, and other officials discussed the provincial government’s response to the occupation at Ipperwash Provincial Park. This is the meeting where former Attorney General testified that he heard Premier Harris say “I want the fucking Indians out of the park”. This is the same meeting at which former Deputy Solicitor General Todres testified that she heard former Minister of Natural Resources Hodgson say, “Get the fucking Indians out of my park.” Both denied making these comments but the Premier acknowledged at the Inquiry’s hearings that the statement, attributed to him, would be racist. I have found that the statements were made and that they were racist, whether intended or not.

Governments and elected officials must be publicly accountable for their role in important decisions and meetings. Public trust in impartial and non-partisan policing depends on ministers and governments being forthright and truthful about their role in important decisions and meetings. Unfortunately, both the Attorney General Charles Harnick and Premier Harris misled the Legislature about the “dining room meeting” with the result that it took a public inquiry for the public to learn the details of this key event.

It is impossible to hold individuals or institutions responsible for their actions unless what happened and who participated in key decisions is clear. Secrecy or the lack of transparency is a breeding ground for abuse of power, public cynicism, and attacks on the legitimacy of important public institutions. Secrecy or lack of transparency in police/government relations may conceal inappropriate government interference in policing or give the appearance of inappropriate interference.

## **6. Did the OPP respond appropriately?**

The OPP planned for the occupation. Undercover officers were in the park before the end of August. During the last week of August 1995, Inspector Carson led a team of officers in planning for the potential occupation. The plan was called Project Maple and its objective was “to contain and negotiate a peaceful resolution”.



In the event of an occupation, the plan called for the OPP to cohabitate with the occupiers in the park. The OPP thought that they and the occupiers could peacefully remain in the park until a solution to the occupation could be arrived at. It was the Incident Commander's intention that, during cohabitation, officers would be physically close to the occupiers and not stationed "a hundred yards away watching them with binoculars". He wanted the police to interact and communicate with the occupiers in an attempt to keep the situation "as calm as we could". Inspector Carson believed that if officers engaged the Aboriginal people in dialogue, there was less risk of harm.

The possibility of gunfire and violence was raised in the planning process and it was known that the occupiers had weapons because they were hunters. The concern was not with the occupiers from Kettle and Stony Point but with "outsiders". During the planning process it was clear that there had "never been any situation where the OPP [had] been challenged with a firearm" by these Aboriginal people. There had not been one incident between OPP officers and Aboriginal people occupying the Camp Ipperwash rifle range since 1993, and the built up area since July 1995 that involved guns. Inspector Carson did not believe that the Stony Point people would use firearms against the OPP officers and he wanted to ensure that his management team for the incident knew this. However, there were aboriginal people from other areas with different backgrounds that the OPP "couldn't be so confident of".

Project Maple was a good plan in theory. However, it had some shortcomings that manifested themselves as the occupation developed. The first shortcoming was the issue of communications with the occupiers. Inspector Carson agreed at the hearings that the Negotiations Response Plan did not contain a communication strategy for important messages that ought to be conveyed to the occupiers, the technical aspects of how the OPP would communicate with the occupiers, or specified people outside the OPP who could communicate with the occupiers. There was no plan to use written messages in the event that the occupiers did not wish to speak to the OPP. On the evening of September 6, 1995, the OPP did not have available and did not consider using a bullhorn to communicate to the occupiers that they had no intention of entering the park and that what they wanted was for the occupiers to remain inside the park.

Another shortcoming was intelligence. The intelligence component of Project Maple had several weaknesses. Intelligence was originally omitted from the organizational chart in Project Maple.

Intelligence had four functions in Project Maple: (1) to identify as many occupiers as possible; (2) to develop biographical profiles on those identified; (3)

to attempt to identify visitors to the Ipperwash area; and (4) to collect, analyze, and disseminate all pertinent intelligence relating to this operation.

The intelligence unit did not report directly to the Incident Commander but reported through Detective Sergeant Richardson, who was the primary criminal investigator and not an intelligence officer.

Project Maple also did not put in place the “classic” intelligence system under which an Incident Commander relies on his or her intelligence team to provide a finished product in which raw data has gone through the intelligence cycle. Under the traditional model of intelligence, all raw data flows through the intelligence unit and then to the Incident Commander. This eliminates potential misinformation or unanalyzed information from being transmitted to the Incident Commander. While Project Maple called for analysts, on September 4, 5 and 6, no analyst was assigned to perform the intelligence functions described in Project Maple.

In addition, Inspector Carson did not have specific training in intelligence in 1995. Moreover, Inspector Carson said that in 1995 he would not have made an operational decision based on intelligence. Intelligence clearly did not play a central role for Inspector Carson at Ipperwash. Training for intelligence operations was lacking, both for the Incident Commander and other senior OPP officers. It is important that the leader of the intelligence unit report directly to the Incident Commander, which was not the case in Project Maple.

## **7. Why did the OPP march toward Ipperwash Provincial Park on the night of September 6? What went wrong?**

The OPP marched down the road on the night of September 6, 1995 because they misperceived the intentions of the occupiers, just as the occupiers misperceived the intentions of the OPP. In addition, the Incident Commander had inaccurate and unverified information that he relied upon to make the key decision to deploy the Crowd Management Unit (CMU) and the Tactics and Rescue Unit (TRU).

When the Incident Commander left the command post that evening to go to a friend’s home for dinner at approximately 7:00 pm, he believed the situation was stable at the park. Inspector Carson was hopeful that the injunction motion in Sarnia the following morning would resolve some of the issues surrounding the park. Inspector Carson’s approach from the outset was to move slowly – to inform the occupiers they were trespassing on provincial property, to try and negotiate with the occupiers, and to wait for the MNR to seek an injunction. This was in conformity with the objectives in Project Maple.



But under Inspector Linton's command that night, the situation at the park was perceived to be escalating. That perception was based on Acting Detective Staff Sergeant Wright's encounter with the Aboriginal people, the inaccurate reports about the incident involving Gerald George and Stewart George, the occupiers' preparation of the yellow school bus, the increased vehicular traffic, the movement of women and children out of the park, and the belief that a fire was burning in the sandy parking lot. When Inspector Carson was contacted at his friend's home that evening, he tried to halt what he perceived to be Inspector Linton's precipitous decision to call out the TRU team. Inspector Carson immediately returned to the command post, despite Inspector Linton's view that this was unnecessary.

When Inspector Carson returned to the command post that evening, "[I]t was chaos ... " "There was a lot of information, a lot of discussion and a lot of things being shared back and forth". Inspector Carson decided that night to mobilize the CMU and use TRU to observe and provide intelligence, and to cover the CMU. Inspector Carson took personal responsibility for the decision to deploy the CMU and the TRU.

The OPP acted with undue haste when it decided to mobilize and deploy the CMU and TRU in darkness on the night of September 6, 1995. The necessary time should have been taken to allow Constable Poole's written statement of his interview with Gerald George to reach the command post. This would have cleared up the confusion and refuted the inaccurate report that the Aboriginal occupiers had beaten a female civilian's car with baseball bats. Time should also have been taken to authenticate the unconfirmed report of Gerald George that there were guns in the park. And time should have been taken to verify whether there was in fact a fire built in the sandy parking lot.

Inspector Carson described the TRU Team as "the eyes" of the Incident Commander but prior to the deployment of the CMU, the TRU Sierra team was not able to successfully move into position to be "the eyes" on the sandy parking lot. Even when the CMU was initially deployed, one of the officers on the Sierra team alerted the Tactical Operations Centre that the Sierra team was not in position and did not yet have an "eye" on the park. Yet the CMU officers proceeded to march down East Parkway Drive to the sandy parking lot.

The OPP should have considered other options while it waited for confirmation about reports of the Gerald George and other incidents. For example, cottages in proximity to the park could have been evacuated while the OPP waited to authenticate reports concerning the activities of the occupiers, and they could have waited for daylight.

The occupiers did not understand that the OPP had no intention that night, of entering Ipperwash Provincial Park nor of removing the occupiers from the park.

At no time did the OPP use a bullhorn or post written material outside the park or on the park fence to communicate this important message to the occupiers.

There was a perception by the occupiers of increased police presence on September 6, 1995 in the Ipperwash Provincial Park area. The boat surveillance on Lake Huron, and the low-flying helicopter surveillance caused agitation and anxiety amongst the First Nations people. This caused the occupiers to engage in preparations for what they believed was an aggressive OPP move against them. They collected rocks and sticks, fueled the school bus, and arranged for the women and children to leave the park. On the scanner, they overheard the OPP communicate that they planned to march to the park that evening.

Inspector Carson was a conscientious and competent Incident Commander at Ipperwash during the September 1995 events. He is a man of integrity who clearly wanted the Aboriginal occupation to be resolved peacefully. But on the night of September 6, 1995, I believe it was a mistake to deploy the CMU and TRU down East Parkway Drive toward the sandy parking lot.

CMU officers, dressed in hard Tac equipment with their helmets and shields, marched shoulder-to-shoulder in formation toward the park. There were thirty-two officers, an eight-man arrest team, two canine teams, and two prisoner vans. Several CMU officers were nervous as they marched toward the park in darkness. TRU officers walked ahead of the CMU with assault rifles and semi-automatic pistols, providing cover. The CMU leader yelled commands to his officers as the police marched toward the sandy parking lot. The Aboriginal people were terrified as they saw the officers dressed in “riot gear” marching toward the park. The Aboriginal occupiers were not armed with guns, but some did have baseball bats, stones and sticks.

The OPP’s plan to have the occupiers return to the park from the sandy parking lot seemed to work, at least initially. As the CMU advanced to the fence line outside Ipperwash Provincial Park, the occupiers retreated from the sandy parking lot into the park. As the CMU came to a halt, the last few occupiers walked through the turnstiles into Ipperwash Provincial Park. Sergeant Hebblethwaite radioed to the Tactical Operations Centre that “the badgers are in the park.” The CMU Incident Commander, Staff Sergeant Lacroix, thought the CMU’s mission was complete.

An Aboriginal man, subsequently identified as Cecil Bernard George, whose fear of the police had turned to anger, walked into the sandy parking lot waving a steel pipe that he picked up. He yelled that the park property was Aboriginal land, and that his grandfather was buried on this land. CMU officers had backed up at this time to Army Camp Road. The CMU Incident Commander yelled “punchout”. CMU officers ran toward Cecil Bernard George and a confrontation



ensued between the OPP and the occupiers. The police fired their guns during the altercation and Dudley George, a thirty-eight year old occupier, was shot and killed by Acting Sergeant Deane.

Deploying the CMU was an offensive not a defensive strategy. It was a show of force. It was designed to clear occupiers or protestors from a particular area. If the strategy does not work, the potential for violence increases. Using the CMU was a calculated risk that was within Inspector Carson's authority to make. The use of any force must be to ensure public safety. Based on the information that he had, Inspector Carson made a decision to use the CMU to clear the sandy parking lot. In his view, public safety required it. But the information upon which Inspector Carson made the decision was incorrect. If Inspector Carson had correct information, I believe that he would not have made a decision to deploy the CMU. If Inspector Carson had waited until the TRU Sierra Teams were in position and reported back to him on what was happening in the sandy parking lot and kiosk, he would have learned that there was not a fire in the sandy parking lot, how many people, if any, were in the sandy parking lot and whether they had any guns. He would have had better information upon which to make his decision. One of the problems was that there was not an appropriate intelligence system in place to verify the information about guns that had been provided to him. Inspector Carson should have also considered using a bullhorn to inform the occupiers that the OPP had no intention of entering the park and that the OPP simply wanted them to leave and stay out of the sandy parking lot.

The decision to deploy the CMU and TRU in this way, was not in keeping with the peaceful approach called for in Project Maple and did not adequately contemplate the characteristics of an Aboriginal protest. Moreover, this level of response to a perceived escalation of activity increased the potential for violence. Given the heightened tension created by this situation, one could have, and in my view, should have, contemplated that any unexpected occurrence – such as Cecil Bernard George walking out the park turnstile into the sandy parking lot – might set off a confrontation. This is exactly what happened.

Inspector Carson should have realized that sending a large number of officers in darkness, with helmets, shields and guns to confront the occupiers could have easily erupted and resulted in a confrontation between OPP officers and the occupiers. Inspector Carson thought that he knew the occupiers. He did not believe that they would use violence against the OPP. Except for isolated incidents involving the military, the occupiers had not used violence. And, until September 4 and 5, the occupiers had not resorted to violence against the OPP. Inspector Carson misjudged and did not anticipate the reaction of the occupiers to the arrest of Cecil Bernard George. The OPP should have ensured that Inspector

Carson had a robust intelligence capability to help him assess the situation quickly and accurately.

This was the first time that the CMU and TRU had been deployed together in this manner and, in my view, the OPP officers had insufficient experience with this approach. In addition, they had little and sometimes conflicting information about what they were about to confront.

Notwithstanding the many progressive reforms undertaken by the OPP in recent years in relation to policing Aboriginal occupations, the OPP, as an institution needs to be accountable and take some responsibility for the tragedy that occurred on September 6, 1995.

## **8. Did racism or cultural insensitivity contribute to Dudley George's death?**

Cultural insensitivity and racism on the part of some of the OPP officers involved, were evident both before and after Dudley George's death. They created a barrier to understanding and thus made a timely, peaceful resolution of the occupation more difficult. The most obvious instance of racism and cultural insensitivity was a conversation among members of the OPP intelligence team on September 5, 1995, in which an Aboriginal person was referred to as a "big, fat, fuck Indian" and the suggestion was made that they (i.e., the Aboriginal people in the park) could be baited into "a net as a pit" with "five or six cases of Labatt's 50", which "works in the south with watermelons".

These comments were racist against the Aboriginal people who were under surveillance at the time, and they were racist against persons of colour. Not one witness in the hearing tried to defend or rationalize these comments, including the Incident Commander, John Carson, who described the comments as "inappropriate", "unacceptable", and "not to be tolerated".

The racist comments noted above were not an isolated incident; there were a number of other tape-recorded conversations of officers making derogatory remarks about Aboriginal people at the time of the occupation.

The Inquiry also learned of several inappropriate activities after the occupation, including the production and distribution of offensive coffee mugs, and t-shirts containing racist imagery to commemorate the OPP's actions at Ipperwash.

Equally disturbing was the manner in which the OPP dealt with this behaviour. In some instances, they never found out about it. In other cases, senior officials decided that it did not amount to "misconduct." In cases where they did find misconduct, it was determined that the officers should be disciplined under the "informal" procedures set out in the *Police Services Act*.



The OPP's response to these incidents was insufficient. Officers were either subject to internal, informal disciplinary processes or not disciplined at all. Several incidents were not discovered or dealt with until years later when they were "discovered" in the lead up to, or during, this Inquiry. These circumstances call into question the disciplinary regime for this kind of conduct and the internal mechanisms within the OPP for reporting it.

Another example of racism towards Aboriginal people in the period before Dudley George's death was the Ontario Ministry of Natural Resources' race-specific enforcement policy, "Procedures for Dealing with First Nations People". This policy, developed with the assistance of an OPP officer, was issued in August 1995 for the Pinery and Ipperwash Provincial Parks. This policy is an example of inappropriate, racially biased policing and is not acceptable in our society.

Cultural insensitivity and racism did not cause Dudley George's death but it may have contributed to the lack of a timely and peaceful resolution of the occupation. Some members of the OPP held negative stereotypes and thought the worst of the occupiers. While I do not believe this to be true of Inspector Carson, I do believe cultural insensitivity and racism exhibited by some members of the OPP contributed to misunderstandings and misinterpretations of the occupiers' actions and intentions on the crucial days between September 4 and 6, 1995.

Some occupiers also held negative stereotypes and thought the worst of the police. This was also unfortunate but cannot be equated with the stereotypes held by some members of the OPP. Police officers and police services have the authority to enforce the laws and to use force. Accordingly, police officers have a responsibility to treat all persons fairly and to be free of bias and prejudice. Neither cultural insensitivity nor racism has any place in a police force in a civilized society such as Canada.

Cultural insensitivity and racism do not have any place in the highest offices of the province. Both the Premier and the Minister of Natural Resources made racist comments on September 6 that were offensive and inappropriate in any circumstance and particularly when voiced by the leaders of the province. These views also created a barrier to understanding and did not contribute to resolving Ipperwash peacefully.

## **9. Is the federal government responsible?**

The federal government bears the primary responsibility for the occupation of Ipperwash Provincial Park by protesters in September 1995

The people of the Kettle and Stony Point First Nation, including the occupiers at Stoney Point/Aazhodená have been, and continue to be, neglected by the federal government.

Consider this simple chronology:

- Eighty years have passed since the “odour of moral failure” surrounding the 1927 “surrender” of the Kettle Point and Stoney Point lands; the 1928 surrender of the Stoney Point lands had similar characteristics.
- Seventy years have passed since the Kettle and Stony Point Council asked for protection of their burial site in Ipperwash Provincial Park.
- Sixty-five years have passed since the Department of National Defence took over the Stoney Point reserve for military training.
- Sixty-two years have passed since the end of World War Two, at which time the residents of Kettle and Stony Point First Nation expected the land to be returned.
- Twenty-six years have passed since the federal government agreed to return Camp Ipperwash, in whole or in part, when it was no longer needed for military training.
- Thirteen years have passed since the Minister of National Defence announced that the military no longer needed Camp Ipperwash.
- Twelve years have passed since Dudley George died asserting his community’s right to the lands reserved by treaty for their exclusive use 180 years ago.

Unfortunately, the issues that were at the heart of the Ipperwash occupation remain unresolved by the federal government, to this day. This inexcusable delay and long neglect, by successive federal governments, are at the heart of the Ipperwash story.

## **10. Who is to blame for Dudley George’s death?**

There is no doubt that OPP Acting Sergeant Ken Deane shot and killed Dudley George. He was found guilty in a criminal court and nothing in this Inquiry challenges or undermines Mr. Deane’s conviction.

However, Acting Sergeant Deane should not have been in a position to shoot Mr. George in the first place. The federal government, the provincial government, and the OPP must all assume some responsibility for decisions or failures that increased the risk of violence and made a tragic confrontation more likely.

The federal government has allowed the land issue to fester for decades. This was the catalyst for the occupation in the first place.



The provincial government could have appointed a mediator or negotiator at any time, but did not. The Premier could have urged patience, rather than speed. These decisions effectively foreclosed the possibility of initiating a constructive dialogue with the occupiers or others on ways to end the occupation peacefully.

The OPP was committed to a negotiated, peaceful resolution but unfortunately mistakes were made. The OPP should have used Aboriginal facilitators and mediators to try to liaise with occupiers. The OPP should have more effectively communicated their intention not to enter the park. Their intelligence failures contributed to their misinterpretation of the actions and words of the occupiers. The CMU and TRU teams should have been held back until information was verified and waited until daylight. Each of these failures increased the risk of violence and made a peaceful resolution less likely. Neither the provincial government nor the OPP wanted a confrontation or violence to occur but neither institution took sufficient steps to minimize the prospect of violence.

It is impossible to attribute Mr. George's death to a single person, factor, decision or institution. On the contrary, it was the combination of these that made a violent result more likely, particularly when they all came together in the space of a few short days and hours in the context of a highly-charged confrontation. Individuals and institutions need to be held accountable for the consequences of their decisions and actions, whether those consequences were intended or not.

## **11. What can be done to prevent violence in the future?**

Volume 2 contains a detailed analysis of the causes and consequences of Aboriginal occupations and protests. It also analyzes the considerable progress that has been made by the OPP and others in how to police Aboriginal occupations and protests peacefully. The OPP and others have learned important lessons from Ipperwash and elsewhere about how to avoid violence in similar circumstances. I believe that the recommendations made in this report, if implemented, will reduce the potential for violence even more.

Aboriginal occupations and protests are not inevitable, nor are they inevitably violent. If I could answer the question above in a single paragraph, it would be this:

The provincial government and other institutions must redouble their efforts to build successful, peaceful relations with Aboriginal peoples in Ontario so that we can all live together peacefully and productively. There have been significant, constructive changes in the law and to key public institutions in the twelve years since Ipperwash. Yet more is needed. We must move beyond conflict resolution by crisis management. And we cannot be passive; inaction will only increase

the considerable tensions that already exist between Aboriginal and non-Aboriginal citizens in this province.

Research in the course of the Inquiry showed that the flashpoints for Aboriginal protests and occupations are very likely as intense today as they were during Ipperwash, Oka, Burnt Church, or Gustafsen Lake. No one can predict where protests and occupations will occur, but the fundamental conditions and catalysts sparking such protests continue to exist in Ontario, more than a decade after Ipperwash. Indeed, it appears that the flashpoints for Aboriginal protests and occupations may be intensifying.

Usually, the immediate catalyst for most major occupations and protests is a dispute over a land claim, a burial site, resource development, or harvesting, hunting, and fishing rights. The fundamental conflict, however, is about land. Contemporary Aboriginal occupations and protests should therefore be seen as part of the centuries-old tension between Aboriginal peoples and non-Aboriginal peoples over the control, use, and ownership of land. The frequency of occupations and protests in Ontario and Canada is a symptom, if not the result, of our collective and continuing inability to resolve these tensions. Volume 2 of this report, *Policy Analysis*, contains specific recommendations about these matters.

## 12. What about the land?

Gina George, like many other witnesses, stated that the confrontation with the police and Dudley George's death never would have happened if the federal government had returned the land.

Marcia Simon said: "there's a general awareness now that we do indeed have a right to the land ... We're not taking from anyone else, we're just taking back to live on what is ours."

Despite many lessons learned from the events of September 6, 1995, not much has changed in relation to the land that lay at the heart of the occupation. The occupiers continue to occupy Ipperwash Provincial Park and the army camp. Local residents from nearby non-Aboriginal communities and elsewhere do not have access to the park. Title to the army camp continues to be held by the Department of National Defence. Title to the park continues to be held by the Province of Ontario, with a notice to the public posted on the Parks of Ontario website (as of February 2007) that Ipperwash Provincial park is "Temporarily Closed" and identifying it as an "operational" public park. The provincial government has not indicated an intention to restore the park to operating status, and provincial government staff have apparently not been on the site for several years. The OPP do not patrol the park



or the army camp. The Kettle and Stony Point First Nation and residents of Aazhooᑭᑭᑭᑭᑭᑭ continue to have their differences regarding who should have ultimate “control” over the lands comprising the park and the army camp.

Sam George, Dudley George’s brother, stressed the importance of addressing the unresolved issues concerning the land when he was asked about what is needed to heal those most affected by the events of September 1995:

I don’t think it would work if the provincial government ended up saying to my community, “You folks do some healing, we’ll keep the land.” I think healing needs to be done amongst our people of both communities before that can start to take place. They need to look at what’s hurting our people. If you don’t go back and find the source that is making a person hurt, then you can never heal it.

Our people have been hurting since these lands were taken. I think the only way healing can possibly start amongst our people is to have the lands returned to them. All the lands have to come back. I think at that time a healing process may start among the people ... the land itself also has to heal. The land itself is probably hurting right now from the activities that have taken place on there. The land was taken for conflict reasons. It was taken by conflict, used for conflict. I’m talking about the wars. People were trained there to go and do that, and the conflict is still very much alive there. As long as that land is in other people’s names that healing won’t take place and you can’t heal that conflict.

The whole section of land, which is the park and the base, has to come back to the First Nation people’s hands. I think the people at that point can start a process of maybe trying to heal themselves and look at each other and look at what the land needs to be fixed back up.

I believe these words point us in the right direction. The land was the fundamental catalyst for the Ipperwash occupation and Dudley George’s death. Therefore, resolution of the land issue must be part of the way forward and is key to the healing of those most affected by these events.

However, during the Inquiry, I noted that as a provincially constituted commission of inquiry, I do not have the jurisdiction or the mandate to resolve the issues of the army camp or the surrender of the land comprising Ipperwash Provincial Park and therefore we did not call evidence or seek submissions on these issues. Nevertheless, I could not preside over these proceedings for two

years without developing views on the subject and I believe it is incumbent upon me to share these views in these final pages of my report. This issue was like “the elephant in the room”. It was obvious to everyone that it was there, but we could not deal with it. I am reluctant to propose one specific solution regarding the disposition of the park land and prefer to confine my remarks to issues of process and options but I believe the situation regarding the future of the former army camp land is different.

Although the Inquiry has not been involved in, or privy to, discussions that are underway between the Kettle and Stony Point First Nation and the federal government regarding the future of the army camp, I am aware that they are occurring.

In my view, the most urgent priority is for the federal government to return the former army camp to the Kettle and Stony Point First Nation immediately. This land was appropriated in 1942 for a specific, military purpose and it has been decades since it last served that purpose.

As part of the return, the federal government should undertake and pay for the environmental clean up of the camp that is required. My understanding is that this process has already begun; its completion should not be a reason for delaying the return of the land. In addition, successive federal governments’ failure to return the land, for so many years, warrants an apology and appropriate compensation to the Aboriginal people affected. An apology and appropriate compensation will bring a measure of acknowledgement, dignity and justice to the Aboriginal communities affected by the federal government’s failure to return the land, in a reasonable period of time, after the war ended.

The solution regarding the future of the park land is more difficult. The one thing I learned during this Inquiry, is that regardless of the solution for the park land, the way forward must be through a process that is fair, inclusive and transparent. This approach would be consistent with the central themes of this Inquiry and report. Furthermore, any process that is designed to resolve the park land issue must promote reconciliation and the long-term interests of all the communities involved. To this end, the communities affected must be actively involved in the process. Therefore, the best I can do is to recommend a process for going forward. Indeed, given the reasons stated above, it would be inappropriate for me to offer a specific solution for the park land.

The park land is adjacent to the former army camp and is not part of the negotiations between the federal government and the First Nation. The park is under provincial jurisdiction as a result of the 1928 surrender and subsequent purchase by the province.

Allowing the status quo to continue, with respect to the park, is not in anyone’s interest. The park land is currently not part of the First Nation reserve, nor



is it pragmatically subject to provincial management. It is a tribute to the patience and restraint of the occupiers and the local residents that there have been no serious, adverse incidents since 1995. But this unresolved status should not continue.

The division that continues to exist between the Kettle and Stony Point First Nation and the residents of Aazhoodena complicates any proposed solution. These communities need to resolve their differences, perhaps with the assistance of First Nations organizations and, if requested, with the federal and/or provincial government, but these differences should not be used as a reason for not resolving the status of the park.

Unfortunately, there are no perfect solutions and past experience has taught us that solutions that are recommended or imposed by external third parties, are rarely successful. The residents of Aazhoodena must be involved with the First Nation and the non-Aboriginal local community in any discussions regarding the future of the park. I urge all those with an interest in the future of these lands, to put their differences aside and work together to address the common interest of healing and moving forward.

I have already said that I believe the status quo is not an acceptable solution; nor, would it be acceptable in my view, if the park were re-opened unilaterally, by the Government of Ontario, as a provincial park.

One obvious solution is to return the park land, with the army camp, to the Kettle and Stony Point First Nation with the participation of residents of Aazhoodena as I have indicated above. This solution has considerable attraction given the Aboriginal peoples' historical connection to the land, the circumstances of the occupation in 1995, the fact that the occupiers have been occupying the land since that time, and the fact that the two parcels of land have effectively merged into one – as they once were – due to twelve years of inaction by successive provincial and federal governments.

The circumstances of the 1927 surrender of West Ipperwash beach remained contentious with the First Nation for decades. The Kettle and Stony Point First Nation challenged the legality of that surrender in the 1990s, and although the courts found the surrender legally valid, the Court stated that the transactions had “the odour of moral failure”. The Ontario Court of Appeal subsequently suggested that the federal government’s “tainted dealings” might amount to a breach of its fiduciary duty to the First Nation. Although the courts have not considered the 1928 surrender of the Stony Point beach lands, that included Ipperwash Provincial Park, the evidence before me indicated that the circumstances of that surrender had similar characteristics.

This solution of returning the park land is not as simple as it might seem, as it would require the co-operation of the Aboriginal communities as well as

the federal and provincial governments. The provincial government would have to transfer the land to the federal government if it is to be re-constituted as part of the reserve.

In my view, another solution worth considering is a co-management arrangement whereby the Aboriginal communities operate a re-opened park for the benefit of all Ontarians and visitors alike. If this solution is to be pursued, the park land could be put into a trust, similar to what has been done with the disputed land in Caledonia. An independent committee could be established, with provincial government assistance and composed of the First Nation and the residents of Aazhoodena and representatives of the local, non-Aboriginal community. The purpose for this committee would be to negotiate with the provincial and, to the extent necessary, with the federal government, toward achieving this objective. To be effective, this committee would require adequate resources and binding decision-making authority. There would be considerable expense involved as the park infrastructure has completely deteriorated and would have to be re-built.

This option has some attraction because it would enable the Aboriginal people to be responsible for the stewardship of the park land, including the identification and protection of burial sites. In addition, any proceeds from the operation of the park would flow to the Aboriginal community. This solution provides an opportunity for the provincial government and Aboriginal and non-Aboriginal communities to work together in a joint enterprise, with mutual benefit.

There may be other potential solutions for the park land that could be developed by those most directly affected. However, any solution to the situation at Ipperwash should not be regarded as a precedent for other land disputes; each situation requires its own solution, crafted by the people most directly affected.

Following Dudley George's death, Sam George and his siblings expressed their fundamental wish:

In the beginning, all we asked them to do was tell us the truth. We just wanted someone to tell us something. I would much rather not have gone down that path myself. I didn't expect to be in litigation for seven years. I didn't think asking for the truth would become such a hard thing to get at.

As Chief Justice Lamer stated in *Delgamuukw v. British Columbia*<sup>1</sup>, "let us face it, we are all here to stay". My hope is that not only will we face this reality; we will embrace it in the original spirit and intent of the treaties. As I discuss in Part 2 of

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1 [1997] 3 S.C.R. 1010, para.186



this report, these treaties envisioned Aboriginal peoples and settlers sharing the wealth and stewardship of this great land. Since we are all here to stay, we must continue to build relationships of trust, mutual respect and support. The road to reconciliation may be long and difficult, but it is a road that all peoples, Aboriginal and non-Aboriginal, must walk together. I hope the Inquiry process and this report have helped us to take a few steps forward along this road.

## RECOMMENDATIONS

1. The provincial government should invite the federal government to participate in interministerial “blockade” committees to inform and coordinate governmental responses to Aboriginal occupations and protests when a potential federal interest is engaged.
2. Police planning for responding to an Aboriginal occupation or protest should include:
  - a. a communication strategy for important messages that ought to be conveyed to the occupiers;
  - b. the technical aspects of how the police would communicate with the occupiers; and
  - c. specified people outside the police service who could effectively communicate with the occupiers.
3. Police services should ensure:
  - a. that the intelligence unit of the police service is engaged and operating and has adequate resources and procedures for collection, collation and evaluation of information;
  - b. that reports are reduced to writing in a timely manner whether initially transmitted verbally or not;
  - c. that intelligence data is subject to analysis and reliability assessment;
  - d. that there is a single repository through which intelligence data flows to the Incident Commander;
  - e. that the leader of the intelligence unit or his or her designate reports directly to the Incident Commander; and
  - f. that the Incident Commanders and other senior personnel receive training in intelligence.
4. All telephone calls to and from the command post should be recorded and minutes should be kept of all meetings of the Incident Commander. Incident



Commanders should continue to be accountable for the keeping of accurate, detailed notes at the time of events.

5. The Ontario Secretariat for Aboriginal Affairs, in consultation with Aboriginal organizations, should compile a list of available negotiators and facilitators who could assist the government to quickly and peacefully resolve Aboriginal issues that emerge.
6. Incident Commanders must exercise discretion as to what political information is shared with his or her senior officers and be alert to the perception of political influence when exercising his or her discretion. There should be a buffer between the Incident Commander and politicians whether from the federal, provincial or local orders of government.
7. The Province of Ontario should enact a regulation pursuant to the *Police Services Act* requiring officers to file a use of force report when they point a long gun or rifle, regardless of whether a shot is fired.
8. The Ministry of Community Safety and Correctional Services and the OPP should develop written protocols that clearly delineate the appropriate functions of police officers seconded to provincial ministries. In addition, politicians and civil servants should be briefed on the appropriate role of seconded officers.
9. Public order policing strategies should ensure that they address the uniqueness of Aboriginal occupations and protests, with particular emphasis on the historical, legal and behavioural differences of such incidents. Training should focus on the requirements for peacekeeping, communication, negotiation and building trust before, during and after such incidents.
10. The OPP should take measures to ensure that communications between officers regarding tactical decisions and intelligence remain secure and not subject to interception by others.
11. The OPP should ensure the involvement of First Nation police services and the assistance of First Nation mediators when it responds to Aboriginal occupations and protests.
12. The OPP should ensure that the names and badge numbers of officers at public order events should continue to be inscribed visibly and prominently on outer clothing or helmets.

13. The OPP should ensure that when the Public Order Unit (“POU”) is deployed, the incident commander is located with the POU at the site and not in the command post.
14. Police should ensure that known or available information about the circumstances of the injury and the medical history of the patient is conveyed to medical personnel and hospital staff who transport and/or treat the patient.
15. Crisis counselling services should be made available and accessible to individuals who are involved in violent or traumatic events involving police action. The responsibility for provision of the crisis counselling should rest with the provincial government in relation to police conduct that occurs off reserve land, and with the federal government concerning police conduct which occurs on reserve land. The type of services offered should be responsive to the type of treatment required, and informed by the cultural and traditional practices and beliefs of the Aboriginal persons requiring the counselling and support.
16. The OPP should issue a public apology to Cecil Bernard George for the use of excessive force in the form of blows to his head and face at the hands of one or more unidentified police officers during the course of his detainment and arrest in the sandy parking lot during the evening of September 6th, 1995, leading to injuries which required medical treatment. The apology should be delivered in person by the current Commissioner, or his delegate, and via a press release and conference.
17. Regulations to the *Police Services Act* should be amended to implement improved measures to ensure compliance with the mandatory use of force reporting requirement by requiring witness police officers to file a similar report whenever they witness the use of force requiring medical treatment by police officers on civilians, with corresponding disciplinary repercussions for failure to do so.
18. Subject to recommendation 68 in Volume 2, whenever there are allegations of racism (including a failure by other officers to report), they should be dealt with by way of formal discipline, with all the protections and safeguards accorded by the discipline process.
19. The federal government should immediately return the former army camp to the peoples of the Kettle and Stony Point First Nation and guarantee that



it will assume complete responsibility for an appropriate environmental clean up of the site.

20. The federal government should issue a public apology with appropriate compensation to the Kettle and Stony Point First Nation for the failure of the federal government for more than 60 years to honour its promise to return the lands to the First Nation.





Peter Rehak

The Commission's hearing room, Kimball Hall, in the Forest Memorial Community Centre in Forest, Ontario.



W.A. Derry Millar,  
Lead Commission Counsel



Susan M. Vella,  
Commission Counsel



Donald E. Worme, Q.C.,  
Commission Counsel





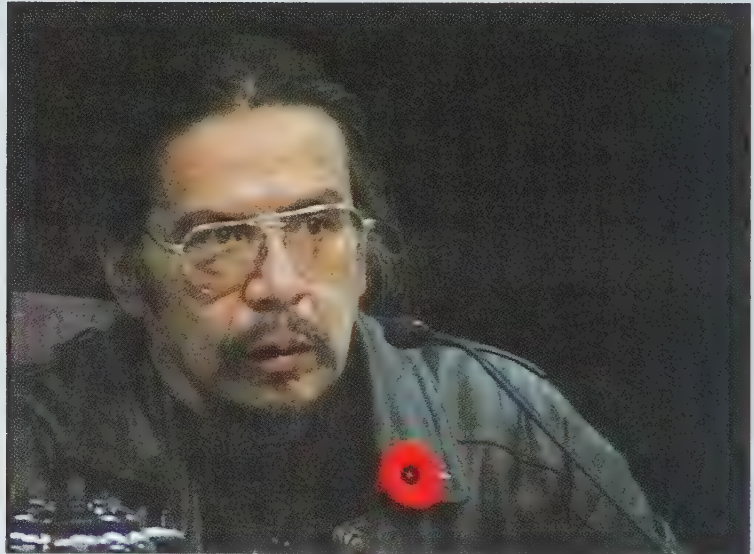
Clifford George



Bonnie Bressette



Roderick George



Cecil Bernard George



Tina George



Chief Tom Bressette





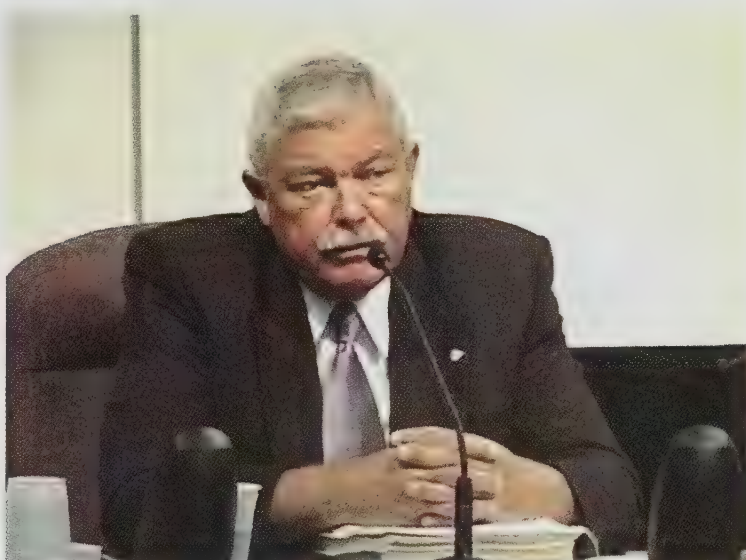
Ovide Mercredi  
National Chief, Assembly of First Nations  
in September 1995



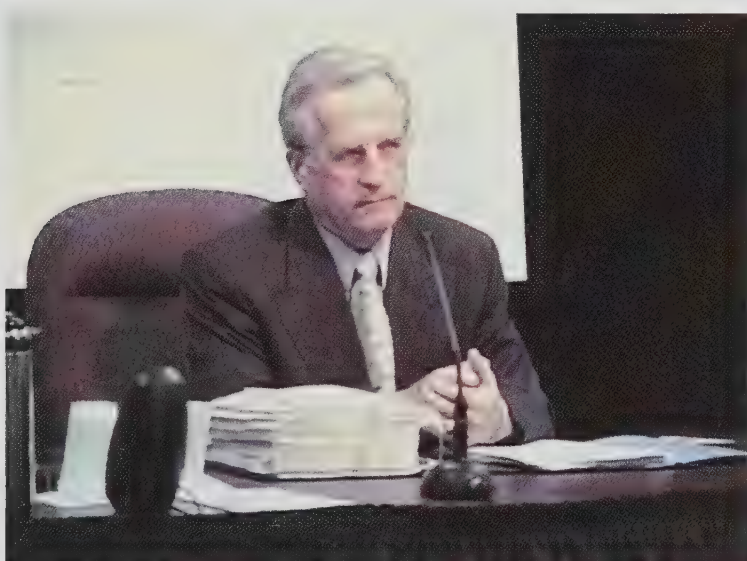
Sam George, Dudley's brother



John Carson  
OPP Inspector + Incident Commander  
in September 1995



Ronald Fox  
OPP Inspector in September 1995

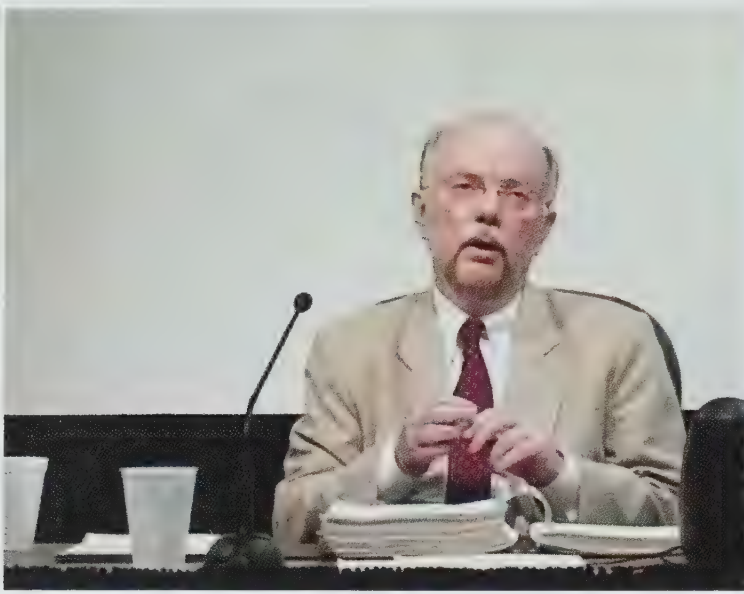


Thomas O'Grady  
OPP Commissioner in September 1995



Julie Jai  
Acting Director Legal Services,  
Ontario Native Affairs Secretariat  
in September 1995





Larry Taman  
Deputy Attorney General & Deputy Minister of  
Native Affairs in September 1995



Debbie Hutton  
Executive Assistant to Premier Harris  
in September 1995



Charles Harnick  
Attorney General in September 1995



Elaine Todres  
Deputy Solicitor General in September 1995

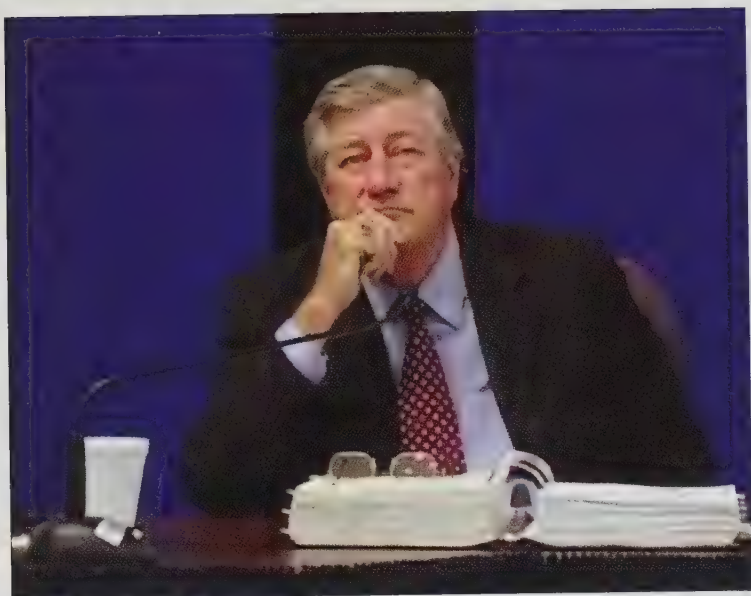


Robert Runciman  
Solicitor General in September 1995



Christopher Hodgson  
Minister of Natural Resources in September 1995





Michael Harris  
Premier of Ontario in September 1995



Wade LaCroix  
OPP Staff Sergeant in September 1995



Gwen Boniface  
OPP Commissioner at the time of testimony,  
June, 2006



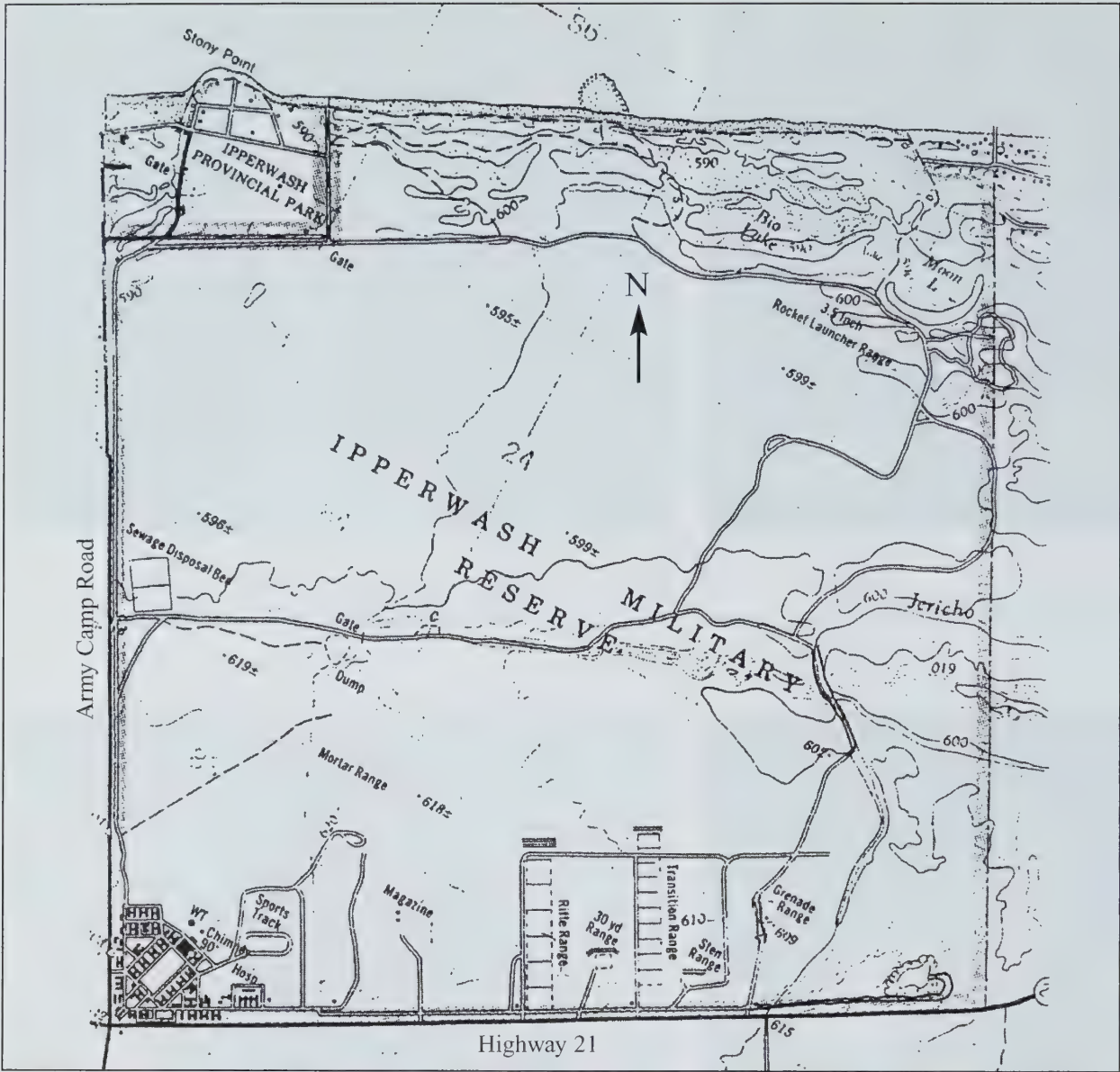
Ron French  
Executive Assistant to Minister Ronald Irwin,  
Department of Indian and Northern Affairs  
in September 1995

Witness photos: Avolution Multimedia



The school bus used during the confrontation on September 6, 1995.





The map shows the former Army Camp and the Ipperwash Provincial Park at left.



Dudley George



A memorial erected to Dudley George near the site where he was shot.



Sandy parking lot, the scene of the confrontation between Aboriginal occupiers and the OPP where Dudley George was shot.



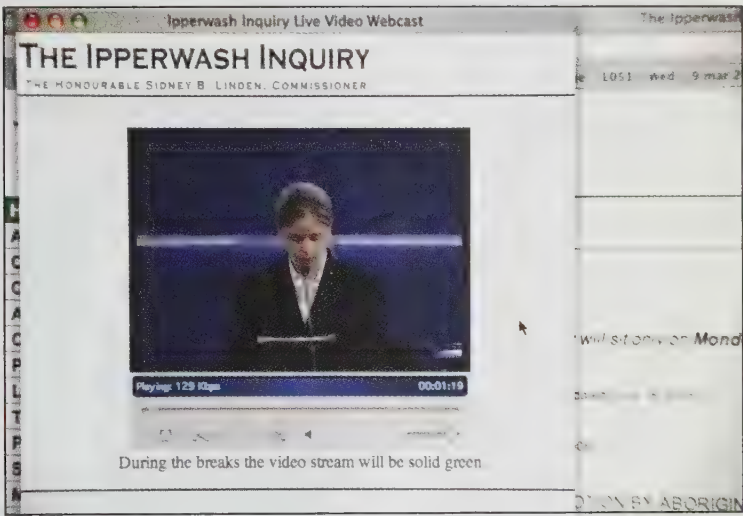


All photos: Peter Rehak

The media area at the Forest Memorial Community Centre during the testimony of Premier Michael Harris, February, 2006.



TV satellite trucks in Forest, February, 2006.



The Inquiry proceedings were webcast. A webcast image of Assistant Commission Counsel Megan Ferrier.



The Inquiry breaks for lunch.



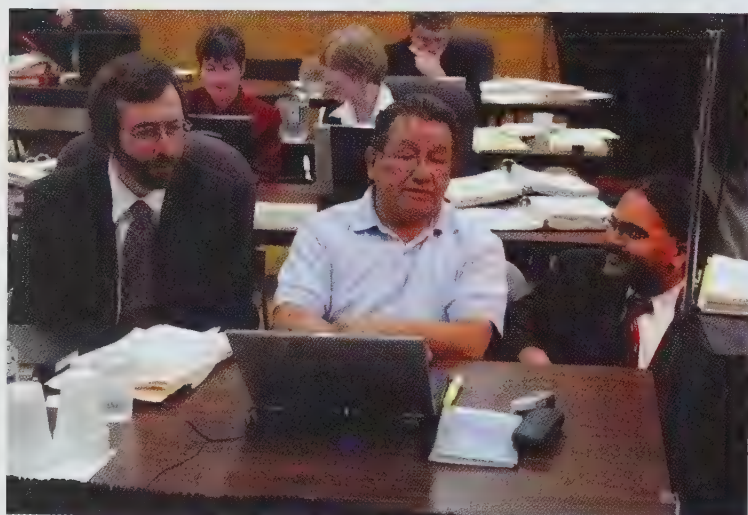
Assistant Commission Counsel Katherine Hensel, as seen on the webcast.





Anthony Ross, left, and Kevin Scullion, extreme right, counsels for the Residents of Azhoodena with Lead Commission Counsel Derry Millar and Commissioner Sidney B. Linden meeting with Residents of Aazhoodena.

Commission Counsel Donald E. Worme, Chief Tom Bressette of Kettle and Stony Point First Nation and Bonnie Bressette.



Murray Klippenstein, counsel for the Estate of Dudley George and George Family Group, Sam George and Basil Alexander, a member of the Klippenstein legal team.



Peter Downard and Jennifer McAleer, counsel for Mr. Harris.

## APPENDICES

1. Order-in-Council 1662/2003
2. Commissioner's Ruling Regarding the OPP Disciplinary Files,  
August 15, 2005





## Order in Council Décret

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and concurrence of the Executive Council, orders that:

Sur la recommandation du soussigné, le lieutenant-gouverneur, sur l'avis et avec le consentement du Conseil des ministres, décrète ce qui suit :

In 1995, the Ipperwash Provincial Park was the site of a protest by First Nations representatives. Mr. Dudley George was shot in the course of the protest and later died.

Under the *Public Inquiries Act*, R.S.O. 1990, c. P.41, the Lieutenant Governor in Council may, by commission, appoint one or more persons to inquire into any matter connected with or affecting the good government of Ontario or the conduct of any part of the public business thereof or the administration of justice therein or any matter of public concern, if the inquiry is not regulated by any special law and if the Lieutenant Governor in Council considers it desirable to inquire into that matter.

The Lieutenant Governor in Council considers it desirable to inquire into the following matters. The inquiry is not regulated by any special law.

Therefore, pursuant to the *Public Inquiries Act*:

### Establishment of the Commission

1. A commission shall be issued effective November 12, 2003 appointing the Honourable Sidney B. Linden as a commissioner.

### Mandate

2. The commission shall:
  - (a) inquire into and report on events surrounding the death of Dudley George; and
  - (b) make recommendations directed to the avoidance of violence in similar circumstances.
3. The commission shall perform its duties without expressing any conclusion or recommendation regarding the civil or criminal liability of any person or organization. The commission, in the conduct of its inquiry, shall ensure that it does not interfere with any ongoing legal proceedings relating to these matters.

O.C./Décret

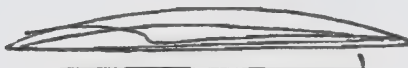
1662/2003

4. The commission shall deliver its final report containing its findings, conclusions and recommendations to the Attorney General. In delivering its report to the Attorney General the commission shall be responsible for translation and printing, and shall ensure that it is available in both English and French, in electronic and printed versions, and in sufficient quantities for public release. The Attorney General shall make the report available to the public.
5. Part III of the *Public Inquiries Act* applies to the inquiry and the commission conducting it.


### Resources

6. The commission may make recommendations to the Attorney General regarding funding to parties who have been granted standing, to the extent of the party's interest, where in the commission's view the party would not otherwise be able to participate in the inquiry without such funding.
7. Within an approved budget, the commission may retain such counsel, staff, investigators and expert advisers as it considers necessary in the performance of its duties at reasonable remuneration approved by the Ministry of the Attorney General. They shall be reimbursed for reasonable expenses incurred in connection with their duties in accordance with Management Board of Cabinet Directives and Guidelines.
8. The commission shall follow Management Board of Cabinet Directives and Guidelines and other applicable government policies in obtaining other services and goods it considers necessary in the performance of its duties unless, in the commissioner's view, it is not possible to follow them.
9. All ministries, Cabinet Office, the Premier's Office, and all boards, agencies and commissions of the government of Ontario shall, subject to any privilege or other legal restrictions, assist the commission to the fullest extent so that the commission may carry out its duties.

Recommended


  
Attorney General

Concurred


  
Chair of Cabinet

Approved and Ordered

NOV 12 2003

Date


  
Lieutenant Governor



**IPPERWASH PUBLIC INQUIRY****COMMISSIONER'S RULING  
RE MOTION BY THE ONTARIO PROVINCIAL POLICE AND  
THE ONTARIO PROVINCIAL POLICE ASSOCIATION****Introduction**

1. The Ontario Provincial Police (the “OPP”) and the Ontario Provincial Police Association (the “OPPA”) have brought a motion requesting that I set aside the summons that I issued to Commissioner Gwen Boniface of the OPP on June 15, 2005 (the “Summons”).

2. The Summons requires Commissioner Boniface to attend before the Inquiry and to produce the following documents:

- (1) The discipline files maintained by the OPP in respect of the “discreditable conduct” of Detective Constable James Dyke and Detective Constable Darryl Whitehead;
- (2) The discipline files maintained by the OPP in respect of the mugs and t-shirt distributions; and
- (3) The orders, policies, guidelines and/or procedures maintained by the OPP in respect of the usage of “informal discipline” including those that would have governed in respect of the informal discipline used under paragraphs 1 and 2.

3. The OPP resists production of the records sought in items (1) and (2) in the absence of a judicial order. The OPP’s position is that sections 69(9) and 80 of the *Police Services Act*, R.S.O. 1990, c. P.15 prevent disclosure of internal complaint files to a public inquiry; that a third party records analysis as undertaken in *A.M. v. Ryan*, [1997] 1 S.C.R. 157 before a judge of the Superior Court of Justice is necessary before the records can be disclosed; and that the records are privileged on the basis of common law privilege principles.

4. The OPPA objects to the disclosure or production of the contents of the discipline files on the basis of statutory prohibition under sections 69 and 80 of the *Police Services Act*. The OPPA submits further that the materials sought are inadmissible evidence at a public inquiry by virtue of sections 69(9) and 69(10) of the *Police Services Act*, section 11 of the *Public Inquiries Act*, and common law rules governing third party records and confidentiality. The OPPA submits that before the records can be produced to the Commission for inspection, the test for production of third party records as set out in *R. v. O'Connor* (1995), 103 C.C.C. (3d) 1 (S.C.C.) must be met.

5. The Province of Ontario objects to the production of the materials on the basis that they are not relevant to the mandate of the Inquiry, and in the alternative are privileged. In the Province's view, an *O'Connor* or *Ryan* application is not necessary, and the issue can be decided on the basis of privilege.

6. Aboriginal Legal Services of Toronto (“ALST”) responds to the motion of the OPP and the OPPA and requests that their motion to quash the Summons to Commissioner Gwen Boniface dated June 15, 2005 be dismissed, and that the materials subject to the Summons be produced to the parties with standing. ALST argues that sections 69 and 80 of the *Police Services Act* are inapplicable to the records over which privilege is asserted, and that the records do not satisfy the test for “case-by-case” privilege under the common law.

7. The Chiefs of Ontario opposes the motion of the OPP and OPPA on the basis that the documents sought under the Summons are highly relevant and that there is no statutory or common law bar to the Commission issuing the Summons.

8. Written submissions were received by the Commission from the parties that decided to make submissions, and oral argument was heard in public at the Inquiry on July 19 and July 20, 2005.

### **Facts**

9. On May 31, 2005, Deputy Commissioner John Carson of the OPP testified before this Inquiry about comments made by Officers Dyke and Whitehead on September



5, 1995. On September 5, 1995, Officers Dyke and Whitehead were engaged in surveillance of the Ipperwash Provincial Park and the Army Camp, during the course of which they made a videotape. The following exchange occurs in the videotape entered as Exhibit P-452 at the Inquiry and transcribed at pages 239-241 of the May 31, 2005 hearing transcript:

25 SPEAKER 1: What the fuck is this? UP --  
1 SPEAKER 2: You're not supposed to be  
2 drinking over in that area.  
3 SPEAKER 1: Yeah, what we're freelance?  
4 SPEAKER 2: (laughs) What --  
5 SPEAKER 1: What are we supposed to be,  
6 UPS?  
7 SPEAKER 2: UPA.  
8 SPEAKER 1: He said UPS. Where are you  
9 guys from? UPS.  
10 SPEAKER 2: UPS.  
11 SPEAKER 1: United --  
12 SPEAKER 2: Parcel Service, sir.  
13 SPEAKER 1: -- Postal.  
14 SPEAKER 2: And we're disgruntled. Still  
15 a lot of press down there?  
16 SPEAKER 1: No, there's no one down  
17 there. Just a big, fat fuck Indian.  
18 SPEAKER 2: The camera's rolling.  
19 SPEAKER 1: Yeah. We had this plan, you  
20 know. We thought if we could five (5) or six (6) cases  
21 of Labatt's 50, we could bait them.  
22 SPEAKER 2: Yeah.  
23 SPEAKER 1: And we'd have this big net at  
24 a pit.  
25 SPEAKER 2: Creative thinking.  
1 SPEAKER 1: Works in the south with  
watermelon.

10. Deputy Commissioner Carson testified on May 31, 2005 that internal disciplinary action was taken against both officers involved in this exchange (*May 31, 2005 transcript, page 241, lines 15 and 16*). He stated that he was not aware of the particular disciplinary action, but knew that a formal hearing under the *Police Services Act* was not held (*May 31, 2005 transcript, page 242, lines 3 and 6*).

11. On June 1, 2005 after informing himself of additional information about the discipline imposed on Officers Dyke and Whitehead, Deputy Commissioner Carson testified that when the incident came to light, Officer Dyke had retired from the OPP and was working for the OPP on a contract basis. At the conclusion of the investigation into the incident, Officer Dyke no longer provided services to the OPP (*June 1, 2005 transcript, page 16, lines 8-25*). Officer Whitehead accepted informal discipline which consisted of forfeiting three days pay and attending four days of First Nations awareness training (*June 1, 2005 transcript, page 18, lines 2-25*).

12. Also on June 1, 2005 Deputy Commissioner Carson testified that several officers had been subject to informal discipline as a result of their involvement in the production and distribution of mugs and t-shirts in relation to Ipperwash (*June 1 transcript, page 26, lines 9-11*). A CD-Rom with images of the mugs and t-shirts was entered as Exhibit P-458 at the Inquiry. The mug depicts a “Team Ipperwash ‘95” logo and an image of an arrow through an OPP shoulder flash. The t-shirt depicts an “E.R.T., T.R.U., ‘95” logo with a horizontal white feather underneath it. In aboriginal tradition, the arrow and feathers symbolize dead warriors (*June 1 transcript, page 28, lines 19-22*).

13. On June 1, 2005, counsel for ALST requested production through Commission counsel of: the discipline files maintained by the OPP in respect of the “discreditable conduct” of Officers Dyke and Whitehead consisting of the videotaped verbal exchange; the discipline files maintained by the OPP in respect of the mug and t-shirt distributions; and the orders, policies, guidelines and/or procedures maintained by the OPP in respect of the usage of “informal discipline”.

14. On June 7, 2005, Counsel for the OPP wrote to Commission counsel and refused to produce the discipline files, stating: “The OPP as a matter of policy and in



reliance upon existing statutory authority, cannot produce, upon request, internal complaint files.”

15. On June 15, 2005, I issued the Summons to Commissioner Gwen Boniface of the OPP requiring Commissioner Boniface to attend before the Inquiry and to produce:

- (1) The discipline files maintained by the OPP in respect of the “discreditable conduct” of Detective Constable James Dyke and Detective Constable Darryl Whitehead;
- (2) The discipline files maintained by the OPP in respect of the mugs and t-shirt distributions; and
- (3) The orders, policies, guidelines and/or procedures maintained by the OPP in respect of the usage of “informal discipline” including those that would have governed in respect of the informal discipline used under paragraphs 1 and 2.

16. The OPP has provided to the Commission the orders and policies referred to in item (3) but has refused to produce the files referred to in (1) and (2).

17. The general course of conduct adhered to by this Commission to obtain documents from the OPP has been as follows: Commission counsel have requested that documents be produced and the OPP has then asked that a summons be issued. Once a summons has been served, the OPP has produced the records sought to the Commission. In this case, notwithstanding that a summons was issued, the OPP refused to produce the documents.

### **Powers of the Commission**

18. I have been appointed Commissioner to conduct this Inquiry by an Order in Council (1662/2003) dated November 12, 2003. Pursuant to section 3 of the *Public Inquiries Act*, R.S.O. 1990, Chapter P. 41, the conduct of an inquiry is under the control and direction of the commission conducting the inquiry.

19. Section 2 of the *Public Inquiries Act* states a commission may be appointed when the Lieutenant Governor in Council:

considers it expedient to cause inquiry to be made concerning any matter connected with or affecting the good government of Ontario or the conduct of any part of the public business thereof or of the administration of justice therein or that the Lieutenant Governor in Council declares to be a matter of public concern . . . the Lieutenant Governor in Council may, by commission, appoint one or more persons to conduct the inquiry.

20. Under the Order in Council that established this Commission, the Lieutenant Governor in Council has appointed me as Commissioner to:

- (a) inquire into and report on events surrounding the death of Dudley George; and
- (b) make recommendations directed to the avoidance of violence in similar circumstances.

21. The Commission has a fact-finding mandate and broad powers to summon relevant witnesses and documents to fulfill that mandate. Subsection 7(1) of the *Public Inquiries Act* provides:

Power to summon witnesses, papers, etc.

7.(1) A commission may require any person by summons,

(a) to give evidence on oath or affirmation at an inquiry;  
or

(b) to produce in evidence at an inquiry such documents and things as the commission may specify,

relevant to the subject-matter of the inquiry and not inadmissible in evidence at the inquiry under section 11.

22. Section 11 of the *Public Inquiries Act* provides:

Privilege

11. Nothing is admissible in evidence at an inquiry that would be inadmissible in a court by reason of any privilege under the law of evidence.



23. Pursuant to the *Act*, the legislature has signaled that a public inquiry may admit evidence that is otherwise inadmissible in a court of law subject to one exception: assuming it is relevant, the only evidence that is inadmissible in a public inquiry is evidence protected by a privilege.

24. The legislature's intention to allow for the broad admission of evidence in public inquiries is consistent with the purpose of public inquiries. As Cory J. stated in *Canada (Attorney General) v. Canada (Commission of Inquiry on the Blood System)*, [1997] 3 S.C.R. 457 (at para. 30), citing *Phillips v. Nova Scotia (Commission of Inquiry into the Westray Mine Tragedy)*, [1995] 2 S.C.R. 97 (at pp. 137-138), one of the primary functions of public inquiries is fact-finding and investigation. According to Cory J. in *Canada (Attorney General) v. Canada (Commission of Inquiry on the Blood System)*, [1997] 3 S.C.R. 457 (at para. 34):

A commission of inquiry is neither a criminal trial nor a civil action for the determination of liability. It cannot establish either criminal culpability or civil responsibility for damages. Rather, an inquiry is an investigation into an issue, event, or series of events. The findings of a commissioner relating to that investigation are simply findings of fact and statements of opinion reached by the commissioner at the end of the inquiry. They are unconnected to normal legal criteria. They are based upon and flow from a procedure which is not bound by the evidentiary or procedural rules of a courtroom. There are no legal consequences attached to the determinations of a commissioner. They are not enforceable and do not bind courts considering the same subject matter. The nature of an inquiry and its limited consequences were correctly set out in *Beno v. Canada (Commissioner and Chairperson, Commission of Inquiry into the Deployment of Canadian Forces to Somalia)*, [1997] 2 F.C. 527, at para. 23:

“A public inquiry is not equivalent to a civil or criminal trial. . . In a trial, the judge sits as an adjudicator, and it is the responsibility of the parties alone to present the evidence. In an inquiry, the commissioners are endowed with wide-ranging investigative powers to fulfil their investigative mandate . . . The rules of evidence and procedure are

therefore considerably less strict for an inquiry than for a court. Judges determine rights as between parties; the Commission can only “inquire” and “report” . . . Judges may impose monetary or penal sanctions; the only potential consequence of an adverse finding . . . is that reputations could be tarnished.”

### **Rules of Procedure and Practice of this Inquiry**

25. I have determined, pursuant to my authority under section 3 of the *Public Inquiries Act* and the Order in Council, that this Inquiry will be conducted under the Inquiry’s Rules of Procedure and Practice (the “Rules”). All parties to the Inquiry have agreed to abide by the Rules. The Order in Council establishing this Inquiry provides in paragraph 9:

All ministries, Cabinet Office, the Premier’s Office, and all boards, agencies and commissions of the government of Ontario shall, subject to any privilege or other legal restrictions, assist the commission to the fullest extent so that the commission may carry out its duties.

26. Rule 13 of the Rules of the Inquiry specifically highlights that all relevant evidence is admissible in a public inquiry unless it is privileged:

Subject to section 11 of the *Public Inquiries Act*, the Commissioner is entitled to receive any relevant evidence at the Inquiry, which might otherwise be inadmissible in a court of law. The strict rules of evidence will not apply to determine the admissibility of evidence.

27. Under the Inquiry Rules, I have the power to order production of documents over which privilege has been claimed to Commission counsel. Rule 32 provides:

The Commission expects all relevant documents to be produced to the Commission by any party with standing where the documents are in the possession, control or power of the party. Where a party objects to the production



of any documents on the grounds of privilege, the document shall be produced in its original unedited form to Commission counsel who will review and determine the validity of the privilege claim. The party and/or that party's counsel may be present during the review process. In the event the party claiming privilege disagrees with Commission counsel's determination, the Commissioner, on application, may either inspect the impugned document(s) and make a ruling or may direct the issue to be resolved by the Regional Senior Justice in Toronto or His designate.

28. In *Lyons v. Toronto Computer Leasing Inquiry* (2004), 70 O.R (3d) 39 (Div. Ct.), Jeffrey Lyons sought an order quashing a ruling of the Honourable Denise Bellamy, Commissioner of the Toronto Computer Leasing Inquiry, which provided for Commission counsel to review documents over which Mr. Lyons was claiming solicitor-client privilege. In its decision, the Divisional Court confirmed that a commissioner has the power to determine whether documents are privileged and, therefore, inadmissible in Commission hearings (*Lyons v. Toronto Computer Leasing Inquiry* at para. 35). The Court also upheld the procedure of Commission counsel screening documents for privilege (at paras. 38-44).

#### **There is no statutory privilege**

29. In my view, the sections of the *Police Services Act*, upon which the OPP and the OPPA rely, do not create a statutory privilege over the documents.

30. Section 80 of the *Police Services Act* provides:

Every person engaged in the administration of this Part shall preserve secrecy with respect to all information obtained in the course of his or her duties under this Part and shall not communicate such information to any other person except,

(a) as may be required in connection with the administration of this Act and the regulations;

(b) to his or her counsel;

- (c) as may be required for law enforcement purposes; or
- (d) with the consent of the person, if any, to whom the information relates.

31. Statutory secrecy and confidentiality provisions do not confer privilege. In *Transamerica Life Insurance Co. of Canada v. Canada Life Assurance Co.* (1995), 27 O.R. (3d) 291 (Gen. Div.), Justice Sharpe considered the issue of whether the Office of the Superintendent of Financial Institutions was required to produce documents in light of the following confidentiality provisions:

- (a) section 22 of the *Office of the Superintendent of Financial Services Act*, R.S.C. 1985, c. 18 which provides: “(1) All information (a) regarding the business or affairs of a financial institution or persons dealing therewith that is obtained by the Superintendent, or by any person acting under the direction of the Superintendent, as a result of the administration or enforcement of any Act of Parliament . . . is confidential and shall be treated accordingly”; and
- (b) section 672 of the *Insurance Companies Act*, S.C. 1991, c. 47 which provides: “(1) Subject to section 673, all information regarding the business or affairs of a company, society, foreign company or provincial company or persons dealing therewith that is obtained by the Superintendent, or by any person acting under the direction of the Superintendent, as a result of the administration or enforcement of any Act of Parliament is confidential and shall be treated accordingly.”

32. Justice Sharpe in the *Transamerica Life Insurance* decision at paragraph 25 said the following with respect to statutory confidentiality:

. . . a statutory promise of confidentiality does not constitute an absolute bar to the information sought here, in my view, a statutory promise of confidentiality does not constitute an absolute bar to compelling production of the documents and information in the possession and control of OSFI. I see no reason to give statutory confidentiality a higher degree of protection than any other form of confidentiality. There is no reason why Parliament should be taken to have adopted the legal category of confidentiality without intending that category to have its ordinary legal meaning and effect. It is well established that confidential information may be



subpoenaed and introduced in evidence if ordered by a court. The general rule is that although information is confidential, it must be produced unless the test laid down in *Slavutych v. Baker*, [1976] 1 S.C.R. 254 is met. Parliament could have provided that the information and documents at issue here could not be compelled by summons, but in my view, to accomplish this end, specific language to that effect would be required.

33. The OPP sought to distinguish this case on the basis that section 80 of the *Police Services Act* is different from the provisions considered by Justice Sharpe because it contains exceptions for when information may be communicated. In my view, the enumeration of these exceptions does not change the nature of section 80 of the *Police Services Act*: it is a confidentiality or secrecy provision, and not a privilege provision.

34. The OPP also submitted that it relies on the following passage by Peter Hogg in *Liability of the Crown*, quoted in the *Transamerica Life Insurance* decision: “Many statutes contain provisions that expressly make information confidential . . . The scope of these provisions is a matter of interpretation in each case. Those provisions that specifically prohibit the introduction of evidence in court will obviously be effective to withhold the protected material from litigation . . .”. In my view, this statement points to the necessity of looking to the specific language of a statute to interpret its provisions in a given case.

35. If the legislature intended to establish a privilege, it would have done so explicitly. The *Education Act*, for example, creates a statutory privilege over pupil records:

A record is **privileged** for the information and use of supervisory officers and the principal and teachers of the school for the improvement of instruction of the pupil, and such record,

(a) subject to subsections (2.1), (3) and (5), is not available to any other person; and

(b) except for the purposes of subsection (5), is not **admissible in evidence for any purpose in any trial, inquest, inquiry, examination, hearing or other**

**proceeding**, except to prove the establishment, maintenance, retention or transfer of the record, without the written permission of the parent or guardian of the pupil or, where the pupil is an adult, the written permission of the pupil. R.S.O. 1990, c. E.2, s. 266 (2); 1991, c. 10, s. 7 (2). [emphasis added]

36. Subsection 69(9) of the *Police Services Act* provides:

(9) No document prepared as a result of a complaint is admissible in a civil proceeding, except at a hearing held under this Part.

37. Subsection 69(9) of the *Police Services Act* uses neither the word “privileged”, nor does it delineate a broad category of proceedings as is the case in the *Education Act*; instead, it refers only to documents being inadmissible in civil proceedings.

38. Pursuant to section 11 of the *Public Inquiries Act* and in accordance with the broad investigative mandate of public inquiries, evidence that is inadmissible in civil proceedings may be admissible in public inquiries: the only exclusion is for privilege. If the legislature had intended to exclude evidence that is inadmissible in a civil proceeding from admission in public inquiries, the legislature would have referred to this exclusion expressly. When a provision specifically mentions one or more items but is silent with respect to other items that are comparable, it is presumed that the silence is deliberate and reflects an intention to exclude the items that are not mentioned (Sullivan, *Sullivan and Driedger on the Construction of Statutes*, Fourth Edition (2002), Butterworths: at p. 187).

39. In my view, section 11 of the *Public Inquiries Act* is a full answer to the question of whether the *Police Services Act* prevents the admission of the discipline files as evidence at the Inquiry; however, the OPP and the OPPA have raised the issue of whether a public inquiry is a “civil proceeding” as referred to in section 69 of the *Police Services Act*.



40. *Canada (Solicitor General) v. Ontario (Royal Commission of Inquiry into Confidentiality of Health Records)*, [1981] 2 S.C.R. 494, the case relied on by the OPP and the OPPA for the proposition that a public inquiry is a civil proceeding does not interpret “civil proceeding” to include a judicial inquiry. This decision stands for the proposition that the police informer privilege applies to a public inquiry. It does not define a public inquiry as a civil proceeding.

41. The OPPA relies on *Re Newfoundland and Labrador & Royal Newfoundland Constabulary Association*, (2004) 133 L.A.C. (4th) 289 (Arbitrator Oakley) as authority for the proposition that a judicial inquiry is a civil proceeding. This case is distinguishable as it relates to the interpretation of a collective agreement.

42. In my view, a public inquiry is not a “civil proceeding” as referred to in the *Police Services Act*. A public inquiry is an investigative and not an adjudicative process. It is inquisitorial not adversarial. Under the mandate of this Inquiry, I can make no determination of civil or criminal liability, nor can I impose damages or penalties. The Order in Council establishing the Commission provides that:

The commission shall perform its duties without expressing any conclusions or recommendation regarding the civil or criminal liability of any person or organization. The commission, in the conduct of its inquiry, shall ensure that it does not interfere with any ongoing legal proceedings relating to these matters.

43. My conclusion that the phrase “civil proceedings” does not include public inquiries is supported by legal dictionary definitions of the words “civil” and “proceeding”:

- (a) The *Canadian Law Dictionary* (Fourth Edition (1999), Barron’s: at p. 47) provides the following definition of the word “civil” but does not contain a definition of “proceeding”:

**CIVIL** 1. The branch of law that pertains to suits other than criminal practice and is concerned with the rights and duties of persons in contract, tort, etc.; 2. civil law as opposed to common law;

- (b) The *Dictionary of Canadian Law* (Third Edition (2004), Thomson Carswell: at p. 192 and 998-999) provides the following definition of the words "civil" and "proceeding":

**CIVIL.** *adj.* 1. Of legal matters, private as opposed to criminal. 2. Used to distinguish the criminal courts and proceedings in them from military court and proceedings. 3. Used to distinguish secular from religious.

....

**PROCEEDING.** *n.* . . . . 8. Includes an action, application or submission to any court or judge or other body having authority by law or by consent to make decisions as to the rights of persons.

44. A public inquiry is of a very different nature from both civil trials and administrative hearings. In civil actions and purely administrative hearings, there is some *lis* between the participants, which the decision-maker must determine. An adversarial process is engaged and the role of the judge or tribunal is to reach a decision with respect to that *lis* based on the evidence and argument presented. In contrast, there is no *lis* in a public inquiry. Public inquiries are investigative.

45. The OPP has argued that because section 69(9) of the *Police Services Act* defines "civil proceeding" to include hearings held under Part V of the *Police Services Act*, which can result in findings of misconduct similar to those that may be made in public inquiries, a "civil proceeding" must also include a public inquiry. In my view, a hearing under the *Police Services Act* is quite different from a public inquiry because it is adversarial and because it can result in penalties being imposed on the officers involved.

46. Accordingly, the *Police Services Act* does not provide a statutory bar to the Commission's receipt of the summonsed discipline files, or to production of the allegedly privileged documents to Commission counsel.

### **Third Party Records Analysis**

47. The third party records analysis proposed by the OPP and the OPPA has no application. While some of the criminal cases in which records relating to officers'



misconduct and discipline are sought by accused persons do refer to the privacy interest of officers in relation to their employment records, in the cases that follow *R. v. O'Connor* (1985), 103 C.C.C. (3d) 1 (S.C.C.), in the context of police discipline files, the "third party" is the police and not the individual officer. Typically, an accused will seek production of documents relating to the investigating officers. Such documents are in the possession of the police and not in the possession of the Crown. The documents are therefore not automatically producible to the accused under the Crown's disclosure obligations.

48. In this case, the documents are within the possession of a party to this proceeding, which, as such, has an obligation to produce relevant documents. It is within my mandate to make decisions regarding relevance and privilege.

#### **Case-by-Case Privilege**

49. I have determined that there is no statutory privilege or bar in the *Police Services Act* with respect to the documents sought. There may be a claim of common law case-by-case privilege based on the Wigmore criteria as referred to in *Slavutych v. Baker*, [1976] 1 S.C.R. 254 and *A.M. v. Ryan*, [1997] 1 S.C.R. 157 at para. 20; however, without access to the documents, neither Commission counsel nor I can assess whether the documents are privileged.

50. My decision with respect to possible case-by-case privilege is reserved pending review of the documents by Commission counsel and if necessary, by me.

#### **Waiver**

51. ALST submitted that privilege, to the extent that it is found to exist at law and on these facts, over the discipline files in relation to Officers Dyke and Whitehead has been waived by virtue of Deputy Commissioner Carson's disclosure to the Commission and to the public of the details of the discipline imposed on the officers. In my view, there has been no waiver by the OPP or its officers as a result of the disclosure to the Commission or to the public of the details of the discipline with the consent of the officers.

**Ruling**

52. In my view, the documents should be produced to Commission counsel. Accordingly, my ruling is as follows:

- (i) Documents over which privilege are claimed should be produced to Commission counsel in accordance with Rule 32, which delineates the procedure upheld in *Lyons v. Toronto Computer Leasing Inquiry*, (2004) 70 O.R (3d) 39 (Div. Ct.);
- (ii) There is no statutory privilege or bar preventing the production of the documents required by my summons to Commissioner Boniface dated June 15, 2005; and
- (iii) A third party records analysis by a Judge of the Superior Court of Justice has no application because the documents are held by a party to this Inquiry.

53. The OPP is required to produce the discipline files in respect of the “discreditable conduct” of Detective Constable James Dyke and Detective Constable Darryl Whitehead on September 5, 1995, and the discipline files maintained by the OPP in respect of the mugs and t-shirt distributions. The documents should be produced to Commission counsel who will review the documents. I will then make my decision regarding the claim of common law, case-by-case privilege.

54. Therefore, the motions to set aside the Summons are dismissed. I direct that:

- (i) The OPP shall deliver the following documents to Commission counsel by no later than 5:00 p.m. August 22, 2005:
  - (1) The discipline files maintained by the OPP in respect of the “discreditable conduct” of Detective Constable James Dyke and Detective Constable Darryl Whitehead; and
  - (2) The discipline files maintained by the OPP in respect of the mugs and t-shirt distributions.



- (ii) Commission counsel shall review the documents for relevance and possible privilege;
- (iii) The review will be conducted confidentially on Inquiry premises;
- (iv) Counsel for the OPP and the OPPA may attend and participate in the review; and
- (v) Relevant and non-privileged material will be distributed to parties with standing in the usual manner employed by this Inquiry.

55. The OPPA has requested that if after hearing submissions I want to enforce the Summons by requiring the OPP to produce the documents to Commission counsel, I should first state a case in writing to the Divisional Court in accordance with subsection 6(1) of the *Public Inquiries Act*. If, after consideration of this ruling, the OPPA still wishes me to state a case, the OPPA should provide confirmation of this request including the particulars of the case to be stated no later than 5:00 p.m. on August 19, 2005.

**Released: August 15, 2005**

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**The Honourable Sidney B. Linden  
Commissioner**

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